

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,  
JANUARY 9, 2007

+ + + + +

The Public Hearing convened in  
Room 220 South, 441 4<sup>th</sup> Street, N.W.,  
Washington, D.C. 20001, pursuant to notice at  
10:30 a.m., Geoffrey H. Griffis, Chairperson,  
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD	Vice-Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
ESTHER BUSHMAN	General Counsel

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D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

This transcript constitutes the  
minutes from the Public Hearing held on  
January 9, 2007.

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1 P-R-O-C-E-E-D-I-N-G-S

2 11:36 a.m.

3 CHAIRPERSON GRIFFIS: Very well.

4 Good morning, ladies and gentlemen, let me  
5 call to order our Public Hearing of the Board  
6 of Zoning Adjustment of the District of  
7 Columbia. This is the 9<sup>th</sup> of January 2007. I  
8 am Geoff Griffis, the Chairperson. Joining me  
9 today is the Vice Chair, Ms. Miller, and Mr.  
10 Etherly. Representing the National Capital  
11 Planning Commission is Mr. Mann and  
12 representing the Zoning Commission with us  
13 will be Mr. Hood. He is on his way.

14 However, we are going to begin and  
15 I'm going to actually rip through these  
16 openings and take any questions if you want me  
17 to reiterate any of this.

18 However, it is important to note  
19 that all procedures before the Board of Zoning  
20 Adjustment are recorded. They are recorded in  
21 two fashions. The first and most important is  
22 the Court Reporter sitting on the floor to my

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1 right creating the official transcript.

2 Attendant to that, I would ask  
3 several things. First, please, fill out two  
4 witness cards prior to coming forward if you  
5 are going to address the Board. Those witness  
6 cards go to the Court Reporter. Also, I would  
7 ask that you turn off cell phones and beepers,  
8 at this time, so we don't have a disruption of  
9 the transmission of that.

10 Third, I would ask that you just  
11 state your name and address for the record  
12 when you begin addressing the Board. You only  
13 need to do this once, obviously, that way we  
14 can attach your name to that important  
15 testimony that you will provide on the  
16 transcript as it is then issued.

17 The order of procedure for special  
18 exceptions and variances is as follows: We  
19 will hear from the applicant and their case  
20 presentation. We will then go to any  
21 Government reports addressing the application,  
22 the Office of Planning, etcetera. Third, we

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1 will hear a report from the Advisory  
2 Neighborhood Commission.

3 Fourth, we would hear persons or  
4 parties in support of an application. Fifth,  
5 we would hear persons or parties in opposition  
6 to the application. Sixth, finally, we will  
7 return back to the applicant for any rebuttal  
8 testimony and/or conclusions.

9 All the way through that, we will  
10 hear cross examination. Of course, cross  
11 examination of witnesses is permitted by the  
12 parties in a case. The ANC within which the  
13 property is located is automatically a party  
14 in the case. We will, as a preliminary  
15 matter, establish parties if there has been  
16 timely filing of a request for party status  
17 and if not, the application and the ANC will  
18 continue as the parties and avail themselves  
19 to cross examination.

20 The record is closed at the  
21 conclusion of the hearing on this case, except  
22 for any information that the Board would state

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1 is additionally required. We will make sure  
2 that there is great clarity if additional  
3 information is required and everyone should  
4 leave today knowing whether the record is open  
5 or what should be submitted into the record  
6 and when that should come in.

7 The Sunshine Act does require us  
8 to conduct our hearings in the open and before  
9 the public. We do, at times, enter into  
10 Executive Sessions, both during or after  
11 hearings on a case. This Board does utilize  
12 those Executive Sessions for reviewing factual  
13 matters in each of the cases and at some point  
14 we may well deliberate on cases in Executive  
15 Session. This is in accordance with our  
16 rules, regulations and procedures. It is also  
17 in accordance with the Sunshine Act.

18 Decisions of this Board must be  
19 based exclusively on the record that is about  
20 to be created before us and so attendant to  
21 that, all of the before said things pertain,  
22 but I would also ask that anyone here present

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1 today not engage Board Members in conversation  
2 if you see us on breaks or during a lunch  
3 recess, so that we don't give the impression  
4 of receiving information outside of that of  
5 the official record.

6 That being said, let me say again  
7 a very good morning to Ms. Bailey on my very  
8 far left, Ms. Bushman with the Office of  
9 Zoning. Ms. Bailey is also with the Office of  
10 Zoning. Ms. Monroe representing the Office of  
11 the Attorney General is with us and Mr. Moy,  
12 also with the Office of Zoning.

13 I would say a very good morning to  
14 you, Ms. Bailey, and ask if you have any  
15 preliminary matters for the Board's attention  
16 at this time?

17 MS. BAILEY: Mr. Chairman, Members  
18 of the Board, good morning and happy new year.  
19 Sir, staff does not have any preliminary  
20 matters, other than swearing in the witnesses,  
21 at this time.

22 CHAIRPERSON GRIFFIS: Excellent.

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1       Why don't we do that? Anyone that would or is  
2       anticipating providing testimony for the  
3       Board, if you would, please, stand and give  
4       your attention to Ms. Bailey, she is going to  
5       swear you in.

6                   MS. BAILEY:    Would you, please,  
7       raise your right hand?

8                   (Whereupon, the witnesses were  
9       sworn.)

10                  MS. BAILEY:    Thank you.

11                  CHAIRPERSON GRIFFIS:    Excellent.  
12       That being done, we can ask if anyone here  
13       present has any preliminary matters for the  
14       Board's attention. Preliminary matters are  
15       those which relate to whether a case will or  
16       should be heard today. Clearly, we only have  
17       one case on the day, so if you are here for  
18       the other case, you're in the wrong place.

19                  However, preliminary matters are  
20       those which, as I say, would stop us from  
21       proceeding or would need to be addressed  
22       immediately before calling the case, whether

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1 proper and adequate notice has been provided,  
2 whether you are prepared or not to move  
3 forward. I would ask you if there are any  
4 preliminary matters for the Board's attention?  
5 You can also introduce yourself for the Board.

6 MR. QUIN: Thank you, Mr.  
7 Chairman. For the record, my name is Whayne  
8 Quin with Carolyn Brown of Holland and Knight  
9 representing the applicant. We are here to  
10 proceed with our case and we have no  
11 preliminary matters.

12 CHAIRPERSON GRIFFIS: Excellent.  
13 Are there any other preliminary matters? Is  
14 this?

15 VICE CHAIR MILLER: I just want to  
16 raise a very minor point, but the application  
17 says that you are seeking special exception  
18 for an addition to an existing child  
19 development center with an enrollment figure  
20 of 185 children and 44 staff. But it appears  
21 that you are also seeking a special exception  
22 to continue an established child development

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1 center.

2 Is that correct? I mean, that is  
3 the way the Office of Planning has addressed  
4 it as well as NCRC has addressed and my  
5 understanding is that the term is going to be  
6 expiring under which the school has been  
7 operating.

8 MR. QUIN: Let me see how to  
9 answer that question.

10 VICE CHAIR MILLER: Okay.

11 MR. QUIN: This really is an  
12 application on its own. Obviously, the school  
13 is there and to that extent it continues and  
14 it will continue, we hope, with the grant of  
15 the Board of this order that would allow the  
16 enrollment maximums that we have specified and  
17 with the construction of the addition. We  
18 have also filed, as you note, in the  
19 alternative, and I don't think we need that  
20 relief, a variance from parking, which I'll  
21 describe later.

22 But it's -- so the answer is the

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1 school is continuing, clearly, but this case,  
2 I think, is best viewed on its own merits, if  
3 that's where you're going with your question.

4 VICE CHAIR MILLER: Separating the  
5 variance. Just with respect to the special  
6 exception, isn't there a term that is expiring  
7 and that without a renewal, you wouldn't be  
8 able, the school would not be able to operate?

9 MR. QUIN: I, frankly, have not  
10 approached it that way. I have approached it  
11 that this is an application not to continue  
12 anything. Really, this is a special exception  
13 to establish a new maximum for the school. So  
14 I'm not sure what point, what the difference  
15 is in terms of the process.

16 MS. MONROE: Can I weigh in just a  
17 second? I guess the reason this came up was  
18 because we were looking at it as if it were --  
19 you had a certain level of enrollment now and  
20 looking for an increment. The Board would be  
21 looking only at any adverse impacts  
22 attributable to that increment.

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1 But if you were coming in to renew  
2 the special exception, underlying special  
3 exception for the use, we would have to look  
4 at the adverse impacts as to the whole use.

5 MR. QUIN: All right. I  
6 understand where you are coming from.

7 MS. MONROE: And because --

8 MR. QUIN: Yes.

9 MS. MONROE: -- the term will be  
10 up on March 13<sup>th</sup>.

11 MR. QUIN: Yes.

12 MS. MONROE: Which is,  
13 approximately, two months. We assumed you  
14 were looking, obviously, to renew the entire  
15 special exception. We look at the whole use.

16 MR. QUIN: Yes.

17 MS. MONROE: If that's what you  
18 are asking.

19 MR. QUIN: I'm asking -- we will  
20 be increasing the maximum enrollment for both  
21 the student body and the faculty and staff.  
22 So to that extent, you are absolutely correct.

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1 MS. MONROE: What am I correct in?  
2 Tell me.

3 MR. QUIN: In that there is an  
4 expiration of the order.

5 MS. MONROE: Right.

6 MR. QUIN: And we will proceed,  
7 but I haven't really addressed the expiration,  
8 because we hope you are going to approve this  
9 case and move forward. So to me it becomes  
10 academically moot.

11 CHAIRPERSON GRIFFIS: Right. So  
12 what you are saying is that the outcome of  
13 this application will supersede the standing  
14 order, which the standing order shows an  
15 expiration date of March 13, 2007.

16 MR. QUIN: Well, I think that  
17 there are lots of questions that can be raised  
18 about what the status of the order is, because  
19 the Court stays and whether that is even a  
20 final order at this point, if you are  
21 referring to the last order.

22 CHAIRPERSON GRIFFIS: No, because

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1       that's not --

2                   MR. QUIN:   If you're referring to  
3       the other order --

4                   CHAIRPERSON   GRIFFIS:       Right.  
5       That's not -- the underlying order was 16307.

6                   MR. QUIN:   Right.   And that one  
7       does expire March the 13<sup>th</sup>, I think.

8                   CHAIRPERSON   GRIFFIS:       And this  
9       process and special exception supersedes that?

10                  MR. QUIN:   Yes.   It will allow the  
11       continuation of the school.   Maybe that's --  
12       I was not sure where you were headed in terms  
13       of the burden of proof and our burden of proof  
14       is to show, as I think we have by our  
15       pleadings, that we will not have an adverse  
16       impact in all the tests that are set forth for  
17       a child development center.

18                  CHAIRPERSON   GRIFFIS:       Right.

19                  MS. MONROE:   Mr. Chairman, one  
20       other thing.   Just so you know, we're also  
21       concerned about possible notice, because it  
22       was advertised as an addition to an existing

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1 special exception. We just want to make sure  
2 that it was the entire special exception that  
3 was in question.

4 And the last thing I just want to  
5 mention is if the term is ending in two months  
6 and this is kind of just a question to bring  
7 up, is a new term a possibility? I don't  
8 know. But if the entire special exception is  
9 being discussed here and not just the limited  
10 enrollment increase, then a new term might be  
11 something that would be possible.

12 MR. QUIN: Yes, we are prepared to  
13 address that. I can state at the outset it's  
14 our opinion that you should not impose a term  
15 on our proposal because of the investment that  
16 is required to do the improvements, such as  
17 other schools. I mean, I can go through a  
18 whole list of them, like Sidwell Friends.

19 CHAIRPERSON GRIFFIS: Right. I  
20 think the critical piece is the fact that you  
21 have anticipated addressing that, so that is  
22 part of this application, which is important

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1 for us to understand and we'll get to the  
2 detail of that in the course of your  
3 presentation.

4 VICE CHAIR MILLER: I just want to  
5 make one comment with respect or in response  
6 to the Office of Attorney General's comments  
7 about advertising. I don't see a problem here  
8 with notice, because, as I stated, the Office  
9 of Planning's report refers to continuation of  
10 the school, as does the ANC report and behind  
11 all of this is a settlement agreement, which  
12 addresses all of that.

13 CHAIRPERSON GRIFFIS: Right.

14 VICE CHAIR MILLER: So I have no  
15 concerns about that.

16 CHAIRPERSON GRIFFIS: I tend to  
17 agree. People probably understand this better  
18 than we do, at this point. Okay. Good  
19 enough. Very well. Let's move ahead then and  
20 I think it's clearly established that this is,  
21 my words, but, a full special exception.  
22 Obviously, there are details here of

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1 difference that are moving beyond that which  
2 is an existing condition.

3 We are well aware of the process  
4 similarly, so we'll move ahead and get  
5 directly into it at this point.

6 Last then, just a quick assessment  
7 of time, so that we can set our schedule for  
8 the day. We will take a lunch break, of  
9 course. How much time do you think you need  
10 for the presentation of your case?

11 MR. QUIN: A lot will depend on  
12 what the Board wants to hear, but we are  
13 prepared to present our case in 15 minutes or  
14 less.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. QUIN: Or even submit on the  
17 record after my opening statement. We hope  
18 you'll be so persuaded, you will just have no  
19 alternative but to grant the case. But I do  
20 think we need at least an opening statement  
21 and then we can determine how far we go after  
22 that.

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1                   CHAIRPERSON GRIFFIS:    Excellent.  
2       Why don't we get out of your way and you can  
3       move ahead.   We'll get to that.   Very well.  
4       Let's begin.

5                   MR. QUIN:    Okay.   Thank you.   We  
6       are really pleased and excited to be here for  
7       the special exception, as you know, but we are  
8       especially pleased to come before you with the  
9       support of our neighbors and community.

10                  After the last proceeding before  
11       this Board, which was somewhat acrimonious,  
12       that may be an understatement, I think it is  
13       fair to say that no one was happy.   The school  
14       was unhappy because of the limitations on its  
15       enrollment.    The neighbors were unhappy  
16       because the Board approved a new building that  
17       was a free-standing substantial building and  
18       the Board probably was unhappy because its  
19       decision was being appealed to the Courts from  
20       both sides.   So it was a cross-appeal.   It was  
21       really a no win situation.

22                  But as our filings indicate, the

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1 school sought a stay from the D.C. Court of  
2 Appeals of the Board's decision and started a  
3 major outreach program to the neighborhood.  
4 The stay was granted and that is set forth  
5 under Exhibit D in our statement. It's the  
6 second -- the first stay is the second stay  
7 that's the order of the Court.

8 And after over nine months of hard  
9 work, tremendous give and take and good will  
10 created on both sides, the neighbors and the  
11 school reached an extensive agreement which is  
12 set forth as Exhibit C.

13 With the agreement of the school  
14 and the neighbors, a joint motion was filed  
15 with the Court to grant a stay to allow the  
16 parties to implement this agreement through  
17 the BZA process and that second order of stay  
18 is also under Exhibit D. And this is that  
19 process:

20 So today, the school appears  
21 before you, entirely different from the last  
22 proceeding, with the support of the

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1 neighborhood, the support of the ANC, the  
2 support of the Office of Planning, no  
3 objection from DDOT, approval by the Historic  
4 Preservation Review Board and we know of no  
5 opposition. It's a great job, I think, by the  
6 neighbors and the school working together.

7 I would like just to summarize the  
8 key elements of this application. First, as  
9 indicated earlier, the approval of a student  
10 enrollment of a maximum of 185 and approval of  
11 a maximum 44 teachers and staff under an  
12 agreement that will be phased in as shown in  
13 Exhibit H.

14 Second, an approval of an addition  
15 to the existing historic structure, and this  
16 is not a free-standing building as before, but  
17 a carefully designed compatible rear addition  
18 that will be described as needed by the  
19 school's architect, Chuck Anthony, and HPRB  
20 has approved that and our report is in the  
21 file and in our statement.

22 In the alternative, and I have

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1 indicated earlier, I don't think it's  
2 necessary, we have requested a variance from  
3 any additional parking requirement. As you  
4 know, the Zoning Commission is presently  
5 considering an amendment to section 2100.5,  
6 which exempts a contributing building and an  
7 addition to it from Historic District -- from  
8 a building that contributes from the parking  
9 requirement.

10 As a law firm, we have  
11 participated in those proceedings and we  
12 believe that the Zoning Commission could not  
13 act in any event because of the process before  
14 April or May at the earliest. And we hope  
15 that you will approve this case as soon as  
16 possible, so that a variance will not be  
17 needed.

18 And we cite, just for the record,  
19 section 3202.16 of the regulations which  
20 indicates that "An applicant may process  
21 building plans in accordance with orders of  
22 the Board in effect at the time the order is

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1 promulgated." And that's one of the reasons  
2 that we would like to have an early decision.  
3 There are obviously many more reasons that we  
4 would like to have an early decision.

5 In any event, the additional need  
6 would only be two parking spaces and due to  
7 the topography and historic nature of the  
8 improvements, all set forth in our statement,  
9 it's simply not feasible to provide additional  
10 parking on the site.

11 There are two more points which I  
12 would like just to briefly go over. We know  
13 the Board does not get involved in the private  
14 agreements between parties, but we do request,  
15 as required by the agreement, that you  
16 condition your approval upon the enrollment  
17 caps which we have specified and also require  
18 a Transportation Management Plan and the  
19 Transportation Management Plan as now exists  
20 is set forth in Exhibit H.

21 The second point is just for  
22 information just to make certain that on the

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1 record that we are all moving along together.  
2 We note that this child development center  
3 while being bound by the enrollment and staff  
4 maximums, as you have indicated that you want  
5 in this type of case, will have an a.m., a  
6 p.m. and a full day session with at any time  
7 no more than 120 students on the -- that's the  
8 maximum in the future at any one time. And  
9 the Certificate of Occupancy will request --  
10 will reflect that. And I just wanted to put  
11 that on the record.

12 Finally, I just want to say that I  
13 have had a lot of experience in school cases  
14 and I have never seen a divided neighborhood  
15 come together as well as this and we hope you  
16 will approve as soon as you can. Our  
17 submission is very complete. It is showing  
18 how we meet all the tests.

19 I do not know how much testimony  
20 you would like to have or whether you would  
21 even just like to take the case and ask  
22 questions, but we could call two witnesses,

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1       which is maybe a middle road, that would take  
2       a maximum of 5 to 10 minutes each and see if  
3       that's sufficient and then they could answer  
4       questions or we could submit on the record.

5               And I know that one of the  
6       neighbors is here. I don't think the ANC is  
7       present, but they have a letter in the record.  
8       So we are prepared to follow your lead. We  
9       will either submit on the record or we can  
10      call our two witnesses to basically describe  
11      the case.

12             CHAIRPERSON GRIFFIS:   Excellent.  
13      Thank you very much. Let me ask, is the ANC  
14      present? A show of hands? ANC is not present  
15      here today. Can I just see how many people  
16      are here to provide testimony, persons to  
17      provide testimony in this case? Is anyone  
18      else here that is going to, outside of you  
19      guys --

20             MR. QUIN: Oh, outside of us.

21             CHAIRPERSON GRIFFIS:   -- who will  
22      be witnesses? Excellent. All right. So we

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1 may have one or two additional testimony. Let  
2 me ask you, Mr. Quin, the enrollment of 185  
3 and staff of 44, are you familiar with the  
4 last case proceeding?

5 MR. QUIN: Yes, I am.

6 CHAIRPERSON GRIFFIS: Is that the  
7 same numbers?

8 MR. QUIN: I'm not sure.

9 MS. IRVIN: No. I think they are  
10 slightly different.

11 MR. QUIN: I'm sorry, could you  
12 identify yourself?

13 MS. IRVIN: Hi, I'm Carrie  
14 Chimerine Irvin, the Board Chair at NCRC.  
15 They are slightly different. I think the  
16 student number is the same. I think the staff  
17 number is slightly different, maybe one higher  
18 or two higher.

19 CHAIRPERSON GRIFFIS: Okay. So my  
20 understanding in reading and listening to the  
21 opening is that that's not -- that's an  
22 uncontested element that enrollment number.

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1                   MR. QUIN:     That's correct.     In  
2     fact, we don't know of any contested elements  
3     here at all.

4                   CHAIRPERSON GRIFFIS:   Fascinating.  
5     Okay.

6                   MR. QUIN:     And I think that that's  
7     -- well, it speaks well I think of what has  
8     taken place.

9                   CHAIRPERSON GRIFFIS:   Good.     The  
10    last piece is I think we do want to walk  
11    through, unless there is other preliminary  
12    questions.   Let's do walk through a couple of  
13    the witnesses and the statements.   And I  
14    wouldn't mind being walked quickly through the  
15    proposed addition to get a handle on it,  
16    because here is my understanding.

17                   We have a job to do also, even  
18    though if things come in uncontested and  
19    everyone is in great agreement, that's well  
20    said.   We have denied applications just like  
21    that.   However, the point is is that we need  
22    to look specifically and obviously get enough

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1 basis for our deliberation and decision on the  
2 specific elements required.

3 But other preliminary questions?  
4 If there's nothing?

5 VICE CHAIR MILLER: Well, this may  
6 wait until your presentation, but I just have  
7 this question based on the Chairman's question  
8 regarding the enrollment, has it changed since  
9 the last order. I think that means the order  
10 that's on appeal. I'm wondering whether the  
11 number is acceptable now because some  
12 circumstances have changed since then?

13 MR. QUIN: Yes, I think that will  
14 be explained by our witness.

15 VICE CHAIR MILLER: Right.

16 MR. QUIN: Essentially, there, as  
17 I see it, are two major elements and I'm  
18 looking at it a little bit from the outside,  
19 but Carrie will tell you what happened from  
20 the inside. Now, I look at it and say well,  
21 what happened? You know, why is it different?  
22 It's different because the Transportation

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1 Management Plan is really working and the  
2 elements are quite detailed, as you can tell  
3 from the exhibit that we filed.

4 Secondly, in any matter before the  
5 Board where there are disagreements, both  
6 sides have to gain and both sides have to lose  
7 to some degree and I think that's what has  
8 happened here. There was a negotiated  
9 settlement after nine months and it has been  
10 very successful and I think there has never  
11 been the good will in this neighborhood that  
12 now exists today.

13 MS. IRVIN: Good morning. NCRC is  
14 delighted to be back here with a new  
15 application for a special exception. As I  
16 said, I'm Carrie Chimerine Irvin and I chair  
17 the board. The National Child Research Center  
18 is the oldest continually operating preschool  
19 in the District of Columbia. The school began  
20 its mission of providing high quality  
21 research-based early childhood education 79  
22 years ago and we have been located at 3209

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1 Highland Place since 1930.

2 The school's unique and important  
3 mission distinguishes it as a model of early  
4 childhood education along with a  
5 developmentally appropriate and research-based  
6 curriculum, the school offers talented and  
7 highly trained teachers, a low student to  
8 teacher ratio, diverse family population and  
9 staff, a tuition assistance program and  
10 opportunities for parent involvement in  
11 education.

12 In addition, NCRC admits children  
13 with a variety of special needs, including  
14 physical, emotional and developmental and  
15 integrates these children into mainstream  
16 classrooms. Through this well-regarded  
17 program, NCRC has an early childhood  
18 development specialist, a speech therapist and  
19 an occupational therapist on staff.

20 This early intervention program  
21 provides services and support to all NCRC  
22 children and their families. Overall,

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1 including all of our programs, our student  
2 population includes currently 171 children  
3 between the ages of 2.5 and 5 when they start  
4 school. A small handful of them turn 6 before  
5 they graduate, if you will, and move on to  
6 elementary school.

7 As the school's 80<sup>th</sup> birthday  
8 approaches, we need to update and expand our  
9 facility. The beautiful 100 year-old building  
10 that NCRC is fortunate to call home needs  
11 updating to remain safe and adequate for the  
12 children and staff and for our excellent early  
13 childhood education program.

14 We are including in our  
15 application today, as you have seen, a plan to  
16 renovate and expand our main building. This  
17 renovation will allow us to accomplish several  
18 important goals. First, we will add an  
19 elevator, which will render the entire  
20 building accessible to all for the first time.

21 Second, the plans include an  
22 indoor play space. Research on young kids

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1 indicates that they really can't learn or even  
2 function very well without significant  
3 opportunities for movement every day. This  
4 new space will our children to move and play  
5 even on inclement weather days and also in the  
6 event of security or other threats that  
7 prevent them from going outside. It will also  
8 provide a safe place for the teachers to take  
9 the children in case of emergency and this  
10 indoor play space will allow the school to  
11 better serve our students with special needs.

12 Third, the plans incorporate space  
13 for parents to meet with teachers and  
14 administrators regarding their children and  
15 for teachers to plan and work together on the  
16 engaging and well thought out curriculum they  
17 provide for the children.

18 And finally, the renovation will  
19 allow us to shift classroom space, so that the  
20 children no longer have to climb all the way  
21 to the third floor to reach their classroom.  
22 This is important for safety as well as

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1 developmental reasons.

2 In order to go ahead with the  
3 construction as soon as possible, we are  
4 undergoing extensive fundraising within our  
5 community and we will secure a long-term  
6 financing from a local bank.

7 In the years, as Whayne said,  
8 since we were last before the BZA, NCRC has  
9 worked very hard to be a good neighbor and to  
10 improve the community environment in our  
11 corner, our beautiful Cleveland Park. We are  
12 very pleased that we now have a 20 year  
13 binding agreement with our neighbors that has  
14 enabled all of us to move beyond the conflict  
15 of the past several years.

16 This agreement, which covers the  
17 renovation of NCRC's facilities as well as  
18 enrollment, traffic management and some other  
19 issues, is a compromise that meets the  
20 school's needs as well as the needs of the  
21 neighborhood. We also now have a Standing  
22 Committee made up of representatives from the

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1 neighborhood and the school that meets  
2 regularly.

3 NCRC is extremely happy to have  
4 this open forum for communication and  
5 collaboration and we are very, very grateful  
6 for the sincere efforts and the hard work on  
7 the part of our neighbors to reach this  
8 agreement with us and to keep its spirit  
9 working very well.

10 Under the terms of the 20 year  
11 agreement, the neighbors support NCRC in  
12 undertaking the renovation project I just  
13 described. The school and the neighbors  
14 through this agreement also agree that NCRC  
15 may increase student enrollment gradually up  
16 until -- from our current enrollment of 171 up  
17 and to a maximum allowable of 181 students by  
18 the year 2013, with a cushion of four students  
19 built in to allow for the uncertainties in the  
20 admissions process.

21 Under the terms of the agreement,  
22 NCRC can also increase the size of our staff

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1 gradually from our current level of a total of  
2 40 employees to a maximum of 44.

3 I just want to reiterate what  
4 Whayne said that in order to provide  
5 developmentally appropriate programs for our  
6 children who range in age and also to keep our  
7 student/teacher ratio low, we divide our  
8 school day into a morning program, which is  
9 three hours, and afternoon program, which is  
10 three hours, and then our full day program,  
11 which runs from 8:30 until 3:00.

12 Consequently, all children who are  
13 enrolled at NCRC in any one year are never at  
14 school attending class at the same time. Our  
15 Certificate of Occupancy permits us to have  
16 120 students in the building at any one time.  
17 Our agreement with our neighbors stipulates  
18 that NCRC will not seek a Certificate of  
19 Occupancy that exceeds 120 and indeed we would  
20 have no need to do so given the nature of our  
21 programs.

22 Finally, the agreement stipulates

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1       that NCRC will continue to maintain our  
2       Traffic Management Program, which includes  
3       provisions that Whayne referenced that are  
4       designed to minimize the impact of NCRC cars  
5       on the neighborhood and includes stringent  
6       penalties for parents who violate these  
7       provisions.

8               The school is committed to  
9       remaining vigilant about the safety and  
10       courtesy of NCRC drivers. We are glad to be  
11       working together with our neighbors to keep  
12       the surrounding streets safe. And if you  
13       would like, I would be happy later on to go  
14       into any detail you want about those  
15       provisions.

16               I would just like to close by  
17       saying that NCRC is deeply grateful for the 76  
18       years we have enjoyed in our Highland Place  
19       home. We look forward to many more years as  
20       a member of this community. Thank you for  
21       your attention. I'm glad to answer any  
22       questions you have.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 Thank you very much. 76 or 79?

3 MS. IRVIN: Well, we didn't start  
4 on this site.

5 CHAIRPERSON GRIFFIS: Oh, I see.

6 MS. IRVIN: We started on Columbia  
7 Row.

8 CHAIRPERSON GRIFFIS: Excellent.  
9 Good. Thank you. Any questions?

10 VICE CHAIR MILLER: Again, I don't  
11 know if this is premature, but I was trying to  
12 skim the conditions as you were talking about  
13 your agreement which lapses in 20 years and I  
14 know that you don't want a term, I think  
15 that's your position, for the school. And I'm  
16 wondering, the conditions with respect to  
17 enrollment and staff, etcetera, they don't  
18 lapse either or do they?

19 I mean, would this be a total  
20 freeze on the enrollment for always, unless  
21 you come before the Board again? Okay.

22 CHAIRPERSON GRIFFIS: Good. Let's

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1 proceed.

2 MR. QUIN: Our next witness is  
3 Chuck Anthony, the architect for the project.

4 CHAIRPERSON GRIFFIS: Great. Yes,  
5 I think you could probably be very succinct  
6 and run right through just for our base  
7 understanding of what is being proposed.

8 MR. ANTHONY: Okay. What I  
9 thought I would do is just give you a very  
10 quick overview and then step up with the  
11 portable mike and go through the drawings.

12 CHAIRPERSON GRIFFIS: Perfect.

13 MR. ANTHONY: For 76 years NCRC  
14 has been a part of the vibrant history of  
15 Cleveland Park. This project represents the  
16 first major renovation and addition to their  
17 facility in all of that time. It's a plan  
18 conceived with great deference to the original  
19 house, to the neighbors and to the  
20 neighborhood. This project will help to  
21 sustain for future children and their parents  
22 a truly remarkable program in its rightful

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1 home in beautiful Cleveland park.

2 First, we wanted to maintain the  
3 park-like setting of the property to maximize  
4 the open space and playground. This openness  
5 and green space is important both to the  
6 neighborhood and because the playground is an  
7 essential part of the school program.

8 Even with the added footprint, our  
9 site is still significantly less dense than  
10 most properties along Highland Place and  
11 Ordway. Our percentage of lot occupancy is  
12 less than half of what is allowable and this  
13 plan proposed a net reduction of only about 4  
14 percent of the open space on the site.

15 Second, we wanted to create a  
16 project that is residential both in scale and  
17 detail. Aside from the fact that it's the  
18 right thing to do in this neighborhood, we  
19 want the current scale and feel to remain.  
20 This is a school in a home. It's a preschool  
21 for little kids. It's what gives the school  
22 its unique character and charm.

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1                   From an architectural and historic  
2                   preservation perspective, the two contributing  
3                   structures on the property are being  
4                   preserved. The main house and the playhouse.  
5                   Our goals for the new work, the addition, were  
6                   restraint and understatement. Zooming out to  
7                   our context within the neighborhood, we tried  
8                   to minimize the visible bulk of the project,  
9                   keep the scope small, keep the character  
10                  residential.

11                  I think the most compelling  
12                  drawings in our submission might be pages 9  
13                  and 10, the before and after street  
14                  elevations, which are sort of the like the  
15                  "Where's Waldo" series trying to figure out  
16                  what is new versus what was there before.

17                  From Highland Place there will  
18                  essentially be no change. The existing house  
19                  will continue to read as a large house on a  
20                  large lot. The lines of the addition do not  
21                  project beyond the lines of the existing  
22                  building/porch. The addition does not front

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1 Ordway, but is set back and is clearly the  
2 back of the Highland front as it should be.

3           Zooming in to the addition to the  
4 main house from a historic preservation  
5 perspective, we're proposing to reopen the  
6 front door, reestablish that door in the  
7 center of the front elevation from the front  
8 porch. Currently, it's around to the side.  
9 We're proposing to remove the fire escape on  
10 the west side.

11           We're holding the addition to the  
12 main house in line with the existing structure  
13 and footprint and also the addition is only as  
14 tall as the height of the existing porch at  
15 the first floor with the exception of the  
16 elevator over and lobby on the second and  
17 third floors. The elevator is also in one of  
18 the least visible spots away from the closest  
19 neighbor and disguised as a chimney cluster.

20           This project provides greater life  
21 safety and code compliance for moving children  
22 off the top floor, generally putting more kids

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1 closer to the ground and moving the adult  
2 administrative functions up. We're providing  
3 compliant egress stairs and eliminating, as I  
4 said, the exterior fire escape. This also  
5 provides handicap accessibility to all levels  
6 of the building for children and their  
7 families.

8 Finally, in the spirit of  
9 compromise, we have worked within the  
10 constraints of the settlement agreement to  
11 achieve a project that meets most of the needs  
12 of the school's program while also satisfying  
13 the concerns of our neighbors. With the  
14 support of our neighbors, the project has been  
15 approved by the Architecture Review Committee  
16 of the Cleveland Park Historical Society, the  
17 ANC and the HPRB.

18 I'm sure you will all agree we  
19 have come a long way. Now, what I would like  
20 to do is just walk over to the plans and walk  
21 you through them quickly. Is that on? Is it  
22 working? This is the context aerial

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1 photograph. You can see the park-like setting  
2 that I mentioned. This is the main house and  
3 this is all the playground and that is the  
4 playhouse building.

5 These are the before and after  
6 site plans. These numbers up in the corner of  
7 the boards refer to the page number in your  
8 booklet, so if you want to look in more  
9 detail, you can see that. This yellow  
10 representing the addition to the main house  
11 and I can tell you that, essentially, that  
12 footprint was prescribed and became part of  
13 the settlement agreement.

14 If you will notice in that  
15 exhibit, there is a drawing with a dotted line  
16 that shows exactly how far out the addition  
17 could stem and I can tell you that basically  
18 the parameters were that it would go no  
19 farther than the width of the existing porch,  
20 so that from the front none of the addition  
21 extends past the existing footprint.

22 Now, what I'm going to do is I'm

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1 going to start on the first floor and I'm  
2 going to go down, then I'll come back up and  
3 go up through the building. These are before  
4 and after plans. This represents the proposed  
5 addition. The elevator is in this location  
6 and the new fire stair is tucked in that  
7 corner. The new front door here with an entry  
8 hall. Currently, the entrance is from the  
9 side, around the side of the porch. New  
10 classroom in this location and this location.

11 Now, moving down one level, as you  
12 know, the site slopes from front to back, so  
13 that at the back side of this addition, the  
14 lower level becomes the ground level. And  
15 this is a similar plan to the first floor with  
16 classroom in the back, elevator which is a  
17 skip stop that allows you to exit the building  
18 at grade, because it's about half a level  
19 down. Similarly, the stairs, the landings are  
20 jogged, so that that half level entry can be  
21 accommodated.

22 This is a new piece in our

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1 proposal. This is a level which is entirely  
2 underground, which is below the addition  
3 described on the previous plan. None of this  
4 part of the plan would be visible above grade.  
5 And this is the motor playroom that Carrie  
6 referred to earlier. Obviously, we have  
7 elevator access, two needs of egress out of  
8 that level.

9 Now, what I'm going to do is go  
10 up, back up to the second floor. We're using  
11 the existing stair, but we have enclosed it  
12 and, essentially, the only thing that comes  
13 out of the second floor level that is new is  
14 the stair and the elevator and that small  
15 piece of hallway. The rest of this is an  
16 existing second floor footprint.

17 And then going up to the third  
18 floor or attic plan, previously this was two  
19 classrooms or one classroom and it is being  
20 converted to administrative space, again with  
21 the elevator, new elevator, and fire stair  
22 accessing those spaces.

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1           That's a quick run through of the  
2 plans.   These renderings are of each side  
3 starting on the front, the Highland Place  
4 elevation. As you may know from looking at  
5 the photograph, it's a very wooded site.  
6 Essentially, from the front, the addition is  
7 within its width, so it's really not visible  
8 from the front.

9           And this is the playhouse, which  
10 is actually on Ordway at the back of the site  
11 relative to Highland being the front. This is  
12 the side elevation or the east elevation.  
13 From this side, this represents the addition.  
14 The concept is that the addition is similar to  
15 a porch that has been in-filled and used for  
16 interior space.

17           This is the existing porch. Our  
18 new addition, essentially, aligns with the  
19 cornice line of the existing porch. And  
20 previously, if you looked at some of the older  
21 photographs, you'll see that there was a  
22 porch, indeed, on the back. So it has been

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1 extended with this proposal.

2 This is the north elevation,  
3 again, with the wrap-around porch of the  
4 addition coming up to this level. In this  
5 area is the, with the two blind windows,  
6 egress stair and then this elevator overrun is  
7 disguised as a chimney.

8 And then finally on the west  
9 elevation, which faces the playground or the  
10 bulk of the playground, again, you can see  
11 this chimney structure, which represents the  
12 elevator and elevator overrun, stair, entry  
13 level at grade, which is a half level between  
14 the ground level and the first floor and again  
15 the wrap-around porch and cornice line  
16 aligning with the front porch.

17 There is another small element to  
18 our project, that is the reconstruction of the  
19 existing bike shed, which you can see in this  
20 elevation. And that is a quick run through.

21 BOARD MEMBER ETHERLY: Mr.  
22 Anthony, if I could perhaps before you hop

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1 off, I'm just curious about -- it's a little  
2 detail. On what is labeled as Drawing 22, and  
3 I believe I'll also come back to Drawing 20,  
4 I'm just curious, the small circular window  
5 there, is that the stairwell behind that  
6 window?

7 MR. ANTHONY: Here?

8 BOARD MEMBER ETHERLY: Yes, sir.

9 MR. ANTHONY: Yes, and that's  
10 actually a blind window as well.

11 BOARD MEMBER ETHERLY: Okay.  
12 Okay. And then also, you don't have Drawing  
13 20 represented, but there is also a circular  
14 window on 20 as well. The same thing, a blind  
15 window?

16 MR. ANTHONY: No. On 20, that is  
17 a real window.

18 BOARD MEMBER ETHERLY: Okay.  
19 Thank you.

20 MR. ANTHONY: Okay.

21 BOARD MEMBER ETHERLY: That  
22 answered my questions.

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1 MR. ANTHONY: Okay.

2 CHAIRPERSON GRIFFIS: Questions,  
3 clarifications? Yes?

4 VICE CHAIR MILLER: Not being an  
5 architect, I'm going to ask you a question  
6 that I didn't understand what you meant. When  
7 you said that there is an entry level between  
8 the ground level and the first floor, I don't  
9 understand that.

10 MR. ANTHONY: Okay.

11 VICE CHAIR MILLER: What do you  
12 enter into then?

13 MR. ANTHONY: Actually, this  
14 elevation would be good to explain. On the  
15 front side of the building, that's the closest  
16 to the first floor level. The site slopes  
17 towards the back, so that on the back side of  
18 the building it's almost like a walk-out  
19 basement. The lower level is at grade. So if  
20 you connect the dots between the front and the  
21 back, this entry point or exit point is  
22 halfway between those two floors. And so it's

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1 almost like the stair, you are entering on an  
2 intermediate landing.

3 VICE CHAIR MILLER: Thank you.

4 MR. ANTHONY: Sure.

5 COMMISSIONER HOOD: Mr. Chairman?

6 CHAIRPERSON GRIFFIS: Yes, Mr.  
7 Hood?

8 COMMISSIONER HOOD: Mr. Anthony,  
9 I'm looking at your last plan. How many trees  
10 are we exactly maybe having removed for the  
11 addition?

12 MR. ANTHONY: As I understand it,  
13 there are only four maple trees to the rear of  
14 the existing building that will need to be  
15 removed for the construction of this addition.

16 COMMISSIONER HOOD: And I believe  
17 Mr. Quin brought up, well, that's another  
18 permitting process, I'm sure.

19 MR. ANTHONY: Yes.

20 COMMISSIONER HOOD: Okay. So  
21 you're not adding any trees. I'm just looking  
22 at the plan. I don't know how many trees.

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1                   MR. ANTHONY:   Actually, we are  
2                   replacing those four with the five maples. If  
3                   you look on the last page of our booklet.

4                   COMMISSIONER HOOD:  No. 5, page.

5                   MR. ANTHONY:  The very last page.

6                   COMMISSIONER HOOD:  Is this it?

7                   MR. ANTHONY:  Yes.

8                   COMMISSIONER HOOD:  Okay.

9                   MR. ANTHONY:  You will see that  
10                  there is five red maples on the Ordway side to  
11                  the right of the playhouse.

12                  COMMISSIONER HOOD:  Okay.

13                  MR. ANTHONY:  Which is replacing  
14                  those trees.  And then there are -- there's  
15                  some additional plantings to the side, the  
16                  magnolias and then some dogwoods to the front  
17                  that are replacing, essentially, dead dogwoods  
18                  on the front of the building.

19                  COMMISSIONER HOOD:  All right.  
20                  All right.  Thank you.

21                  CHAIRPERSON GRIFFIS:  Excellent.  
22                  Anything else?  Any other questions?

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1 COMMISSIONER HOOD: Mr. Chairman?

2 CHAIRPERSON GRIFFIS: Yes.

3 COMMISSIONER HOOD: I just have to  
4 say I don't have any questions.

5 CHAIRPERSON GRIFFIS: Okay.

6 COMMISSIONER HOOD: I wasn't here  
7 when they first started out, but this is a  
8 tremendous difference from when I was here  
9 previously dealing with this case. I would  
10 applaud all those who put in the Construction  
11 Management Plan, the traffic mitigations and  
12 as you said in your statement while it may be  
13 a consensus all the way around, which they  
14 have a process to go through, but this makes  
15 it a lot easier than it was previously. And  
16 I commend all those that had a part in it.

17 CHAIRPERSON GRIFFIS: Very well  
18 said. Thank you. Others? Anything else at  
19 this time? Anything else?

20 MR. QUIN: Not on direct. We have  
21 our witnesses for questions. We also have, if  
22 you had a question for a representative of

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1 our's, George, our traffic consultant, but I  
2 think the DOT report pretty well answers our  
3 questions on that.

4 CHAIRPERSON GRIFFIS: Right. And  
5 if there are any others, we can bring them up  
6 under that. Very well. Yes?

7 VICE CHAIR MILLER: Can you say  
8 why the enrollment number is the right number?  
9 Why it doesn't cause any adverse impacts? Why  
10 it is the right number for the school?

11 MR. QUIN: Well, I think with the  
12 Transportation Management Plan and the  
13 experience, first of all, we have a lot of  
14 eyes that watch this process. And this  
15 transportation plan is working today. And I'm  
16 sure you would hear from others if they  
17 thought there were an adverse impact. There  
18 would not be a settlement. So I think, as we  
19 say in the law, an ipso facto type result.  
20 Were it not for the changes though that were  
21 made and the strong Transportation Management  
22 Plan, I don't think we would be here today.

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1 VICE CHAIR MILLER: All right.

2 MR. QUIN: Carrie?

3 MS. IRVIN: I just wanted to add  
4 from the programmatic point of view. In  
5 coming up with a number that the school wanted  
6 to maintain flexibility, it's really to allow,  
7 to give the school the flexibility to adjust  
8 or change programs to better meet  
9 developmental needs of young kids.

10 It may be that the school would  
11 like to rearrange the way classrooms are, you  
12 know, oriented, how many children with  
13 teachers, etcetera. So it was a number that  
14 would allow for a few students to be able to  
15 do that. The school doesn't have any plans to  
16 dramatically increase, so we didn't need a  
17 larger number than that.

18 VICE CHAIR MILLER: And how long  
19 has the Traffic Management Plan been in place?

20 MR. QUIN: In various stages, it  
21 has been in place for what three years and I  
22 can call a witness to answer that question, if

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1       you would like.

2                   VICE CHAIR MILLER:   Okay.

3                   MR.   QUIN:           Susan?       Identify  
4       yourself.

5                   MS.   PIGGOTT:       I   will.       Good  
6       morning.   I'm Susan Piggott, the Director of  
7       NCRC.     That's all you need?   I can start  
8       answering questions?

9                   CHAIRPERSON GRIFFIS:   Yes, please.

10                  MS.   PIGGOTT:    Okay.   The Traffic  
11       Management Plan that is before you has been  
12       added to over about three years period of time  
13       in order to address some of the concerns of  
14       the neighbors.   Do you want me to go into  
15       those?   What the changes have been?

16                  VICE CHAIR MILLER:   No, I don't  
17       want a lot of detail.   I wasn't on the case  
18       the last time.

19                  MS.   PIGGOTT:    Uh-huh.

20                  VICE CHAIR MILLER:   And I know  
21       that there was a lot of concern about that the  
22       last time.   And so just for the record, you

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1 know, we don't just go on oh, everyone has  
2 agreed, so we sign off.

3 MS. PIGGOTT: Sure.

4 VICE CHAIR MILLER: I mean, it's  
5 kind of like there aren't any -- there has  
6 been a change. There aren't any more adverse  
7 impacts. I mean, things have been corrected.  
8 There were problems before. I just wanted to  
9 get a general sense of that.

10 MS. PIGGOTT: Yes. I think there  
11 have been a number of things. We have written  
12 into our enrollment contracts provisions that  
13 our parents have to sign before their children  
14 can come to school. This is that they agree  
15 to abide by our Traffic Management Plan.

16 VICE CHAIR MILLER: Can I just  
17 interrupt you, because I don't want to belabor  
18 for anybody else.

19 MS. PIGGOTT: Sure.

20 VICE CHAIR MILLER: But I read,  
21 you know, what's in the TMP and stuff. I'm  
22 sure all the Board Members did. My question,

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1 I guess, goes to, you know, were there like  
2 accidents before, but there aren't now or, you  
3 know, what -- it goes to impact as opposed to  
4 -- I know you have all these great procedures,  
5 but how you measure it is really working.

6 MS. PIGGOTT: Sure. The history  
7 of the school didn't really bring forward a  
8 history of accidents in the neighborhood. It  
9 did bring forward some concerns about  
10 congestion in the neighborhood. And so the  
11 Traffic Management Plan addresses a number of  
12 things, such as, for this school only, not the  
13 neighbors, there is a one way traffic pattern  
14 on Highland Place, for example.

15 We have a traffic guard that we  
16 have now had in place for about a year and a  
17 half. I think when we were before you the  
18 last time, we had a traffic -- the traffic  
19 guard was there on a limited basis. The  
20 traffic guard is now a full-time member of the  
21 staff and is on site every day and is out in  
22 front of the school for all of the car pools

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1 during the course of the day.

2 We have added some staggered  
3 arrival and departure times. We have added  
4 yellow stickers to the cars of the families,  
5 so that they can be identified and also to the  
6 staff. We have a number of sanctions in place  
7 for both staff and parents.

8 VICE CHAIR MILLER: Okay. Can I  
9 interrupt you again?

10 MS. PIGGOTT: Sure.

11 VICE CHAIR MILLER: I mean, those  
12 seem like great measures and they seem to be  
13 working. I guess my question is has there  
14 been a noticeable effect? Is the traffic  
15 flowing more smoothly as a result of those?  
16 Is it less complaints by the neighbor  
17 something to measure that they are really  
18 working? I mean, I can see they probably are  
19 working and that there is no opposition, but  
20 is there anything else you want to put on the  
21 record?

22 MS. IRVIN: If I could address

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1       that? First of all, we are in much better  
2       communication with our neighbors, so we hear  
3       from them that things are working more  
4       smoothly. And when things crop up that aren't  
5       working smoothly, we know about them and can  
6       address them.

7               I do think though that to get at  
8       the spirit of your question in addition to the  
9       many procedures and the specifics of our  
10      Traffic Management Plan, there has been a big  
11      difference I think in the time that I have  
12      been at the school in the level of education  
13      that we do with your parent community.

14             There hasn't been a history of  
15      accidents at the site, but I think there has  
16      been over the years a history of drivers who  
17      come in from other neighborhoods not thinking  
18      about how they are driving and acting in ways  
19      that may not be unsafe, may not be illegal,  
20      but are not particularly courteous. And we  
21      have, in my view, successfully and from what  
22      we hear through our neighbors successfully

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1 changed the culture of the school. That it's  
2 no longer okay to just drive in and do things  
3 that are just rude, even if they are not  
4 unsafe or illegal.

5 So we feel that there has been a  
6 noticeable change in culture, you know, as  
7 well as in safety, which has never really been  
8 a problem, and we repeatedly and frequently  
9 ask our neighbors to tell us if that's not  
10 happening, so we can amend our provisions.  
11 Does that answer your question?

12 VICE CHAIR MILLER: Yes, thank  
13 you.

14 CHAIRPERSON GRIFFIS: Good.  
15 Anything else?

16 BOARD MEMBER MANN: I have a  
17 question.

18 CHAIRPERSON GRIFFIS: Yes.

19 BOARD MEMBER MANN: Regarding the  
20 operation of the drop-off and pick-up. It was  
21 just unclear to me from the TMP and from the  
22 plans whether or not vehicles actually enter

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1 the grounds of the school or if that occurs  
2 only from the street.

3 MS. IRVIN: We don't have vehicle  
4 access to the property other than the street,  
5 so it's all entry from the street.

6 BOARD MEMBER MANN: And aside from  
7 drop-off and pick-up, is there any vehicle  
8 access to the grounds?

9 MS. IRVIN: No.

10 BOARD MEMBER MANN: Great. Thank  
11 you.

12 CHAIRPERSON GRIFFIS: Anything  
13 else? Very well.

14 BOARD MEMBER MANN: Actually, Mr.  
15 Chairman, I just had one brief question.

16 CHAIRPERSON GRIFFIS: Yes.

17 BOARD MEMBER MANN: But I don't  
18 think even particularly this goes to the  
19 application, but what is the purpose of the  
20 playhouse or what occurs in the playhouse?

21 CHAIRPERSON GRIFFIS: Playing.

22 MS. PIGGOTT: Some of our programs

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1 is conducted in the playhouse. In particular,  
2 our music program, our motor program and our  
3 library program.

4 BOARD MEMBER MANN: Thank you.

5 CHAIRPERSON GRIFFIS: Excellent.  
6 Is that middle mike not working? All right.  
7 We'll figure that out. Very well. That being  
8 said, has the ANC come in at all? Any  
9 representative from the ANC? Okay. Are there  
10 any other questions from the Board? Any other  
11 witnesses, Mr. Quin? Very well. If there is  
12 nothing further, questions from the Board, I  
13 will take it as that is your case presentation  
14 in chief. Is that correct?

15 MR. QUIN: That's correct.

16 CHAIRPERSON GRIFFIS: Good. Let  
17 me just make one note. We just were handed --  
18 I don't know if that's proper English. I was  
19 just handed a letter. I don't know if you  
20 have seen this from a Mr. Silver.

21 MR. QUIN: No.

22 CHAIRPERSON GRIFFIS: Are you

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1       aware of this?

2                   MR. QUIN:    No, I'm not aware of  
3       any letter.

4                   CHAIRPERSON GRIFFIS:    Excellent.  
5       We're going to make a copy and provide it for  
6       you.   At this time, what I would like to do  
7       is, not that it is of any real value for you  
8       folks, but the Board has been here since early  
9       this morning doing other things, but this is  
10      the most important thing we have.   However, I  
11      would like to take a short lunch break, in  
12      which case we would return and finish this  
13      entire thing this afternoon.

14                  And we could recall this at 1:30  
15      and I assess that we would be done by no later  
16      than 3:00 it would appear, based on what we  
17      have left.   When we return, we would hear from  
18      the Office of Planning to begin.   We will hear  
19      the other Government agency reports and then  
20      persons testimonies and closings, unless there  
21      is any comment on that.

22                  Good.   Any questions?   Then let's

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1 do that now. We will recess briefly for lunch  
2 and we will resume. Thank you.

3 (Whereupon, the Public Hearing was  
4 recessed at 12:29 p.m. to reconvene at 1:37  
5 p.m. this same day.)  
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:37 p.m.

3 CHAIRPERSON GRIFFIS: Very well.

4 Let's resume. As we left off, we were going  
5 to go to the Office of Planning's report. Ms.  
6 Maxine Brown-Roberts is with us.

7 MS. BROWN-ROBERTS: Good  
8 afternoon, Mr. Chairman and Members of the  
9 Zoning Commission, of the Board of Zoning  
10 Adjustment. I am Maxine Brown-Roberts from  
11 the Office of Planning.

12 I think we are in agreement that  
13 the majority of the issues have been worked  
14 out and the Office of Planning does not find  
15 any problems with the application and thinks  
16 that -- as outlined in our report, thinks that  
17 they have met all the requirements of section  
18 205 and we, therefore, recommend an approval.

19 There are, I think, maybe three  
20 things that I wanted to -- or amendments that  
21 I wanted to make to our report. Number one is  
22 that in our report we stated that the age of

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1 the children were from 2.5 to 5 years. We  
2 have since been advised that kids will go up  
3 to 6 years.

4 In addition to that, one of the  
5 conditions that we recommended was that the  
6 approval be for a period of 20 years to run  
7 consistently with the agreement. The Office  
8 of Planning would defer on that to the Board  
9 in that the applicant has requested that that  
10 time frame be taken out. I think we would  
11 feel comfortable either way. If it's there,  
12 it's okay, it puts a time period on.

13 The second thing, if it goes away,  
14 at least we know that there is agreement there  
15 and if they were -- if the number of students  
16 and the staff was to increase, then they would  
17 have to come back, and so there would be that  
18 second chance. There is a chance that if it  
19 increases, that it will come back. So we  
20 think that the time limit is not a crucial  
21 part of the recommendation.

22 Also, on Condition No. 5, we

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1       stated that the number of events outside of  
2       regular school hours will be limited to 12.  
3       I think that was a misinterpretation on our  
4       part of exactly what the agreement was saying  
5       and, therefore, we would like to change that  
6       to say the number of events outside of regular  
7       school hours will be limited to those outlined  
8       in the agreement. And that's it.

9               CHAIRPERSON GRIFFIS: Excellent.

10              MS. BROWN-ROBERTS: Questions?

11              CHAIRPERSON GRIFFIS: Thank you  
12       very much. Are there questions from the  
13       Board? Go ahead, Mr. Hood. Do you have a  
14       question?

15              COMMISSIONER HOOD: Yes. Ms.  
16       Brown-Roberts, I'm thoroughly confused now and  
17       I know it's real simple, but I'm confused  
18       about this time limit issue. Could you  
19       explain to me?

20              MS. BROWN-ROBERTS: Yes.

21              COMMISSIONER HOOD: You said at  
22       some point it will go away. Explain it to me.

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1 MS. BROWN-ROBERTS: Okay.

2 COMMISSIONER HOOD: Because I'm  
3 slow.

4 MS. BROWN-ROBERTS: The agreement  
5 that the applicant has submitted that goes  
6 along with this application is for -- has a  
7 time limit of 20 years. Following that 20  
8 years, it is open. However, we are saying  
9 that we are going to -- we are recommending  
10 approval of 185 students.

11 So if after that 25 -- after that  
12 20 years when the agreement is moot, if they  
13 increase the number of students, then they  
14 will have to come back in. They would have to  
15 come back in anyway. So what I'm trying to  
16 say is that the 20 years, putting the time  
17 limit of 20 years is --

18 COMMISSIONER HOOD: Don't we  
19 usually have a time limit? I guess you don't.  
20 Okay.

21 MS. BROWN-ROBERTS: Not in all.

22 COMMISSIONER HOOD: I don't do

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1 enough.

2 MS. BROWN-ROBERTS: We have had  
3 some that have had time limits and some no.

4 COMMISSIONER HOOD: Okay. All  
5 right.

6 MS. BROWN-ROBERTS: But I think  
7 what I'm trying to say, that in this case we  
8 would feel comfortable not applying a time  
9 limit because we know that there is the  
10 agreement out there that is going to tie them  
11 to that and that has some incremental  
12 additions of students, because it won't go to  
13 185 at the beginning.

14 COMMISSIONER HOOD: Right.

15 MS. BROWN-ROBERTS: You know, it's  
16 going to --

17 COMMISSIONER HOOD: Phase in.

18 MS. BROWN-ROBERTS: -- increase  
19 over time. Right.

20 COMMISSIONER HOOD: Okay. All  
21 right. Thank you. Thank you, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 Anything else? Any other questions from the  
2 Board of the Office of Planning?

3 VICE CHAIR MILLER: With respect  
4 to the limitation on events outside of regular  
5 school hours, you said you're not recommending  
6 12 anymore, but what is in the settlement  
7 agreement. Can you either refer us to that or  
8 summarize it or --

9 MS. BROWN-ROBERTS: I think it's  
10 attachment --

11 VICE CHAIR MILLER: C.

12 MS. BROWN-ROBERTS: Attachment 3.  
13 There is a table. It's not attached to my  
14 report. It's attached to the agreement. In  
15 the agreement it's Attachment 3. It's a table  
16 and there are a number of activities outlined  
17 on that. However, when you count the number  
18 of events, it totals 12. However, if you go  
19 back to the text, what it says is that some of  
20 those events can occur more than once during  
21 the year.

22 CHAIRPERSON GRIFFIS: I see.

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1 MS. BROWN-ROBERTS: So that was  
2 our mistake in thinking that there would only  
3 be 12 events, but because some of those  
4 activities can occur more than once, it's  
5 going to be more than 12.

6 VICE CHAIR MILLER: Okay. So,  
7 basically, is it your position that the number  
8 of events outside of the regular school hours  
9 should be what is outlined in the settlement  
10 agreement?

11 MS. BROWN-ROBERTS: Right, that's  
12 what I'm saying.

13 VICE CHAIR MILLER: Okay. So my  
14 next question is the settlement agreement only  
15 lasts for 20 years. Is it your position that  
16 this condition outlive the settlement  
17 agreement?

18 MS. BROWN-ROBERTS: I hadn't  
19 thought of that.

20 VICE CHAIR MILLER: Let me phrase  
21 it a different way. I guess what I'm saying  
22 is when I look at the conditions that you're

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1 proposing, I believe that you think, the way  
2 I read them, that certainly the enrollment of  
3 up to 185 should be the limit.

4 MS. BROWN-ROBERTS: Right.

5 VICE CHAIR MILLER: If we don't  
6 put a term on this, that should be the limit.

7 MS. BROWN-ROBERTS: Right.

8 VICE CHAIR MILLER: And same with  
9 the staff number.

10 MS. BROWN-ROBERTS: Yes.

11 VICE CHAIR MILLER: We didn't get  
12 into hours of operation yet, but I guess I'm  
13 questioning whether you feel that way about  
14 number of events. You know, is that critical  
15 to this approval as a special exception?

16 MS. BROWN-ROBERTS: Yes, I think  
17 so. I think maybe what would be better, maybe  
18 we need to rephrase it, take some of the  
19 language from -- in order to detach it from  
20 the settlement agreement is to maybe take the  
21 language from there and insert it here, so  
22 that we are not referring back to the

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1 settlement agreement, you know, and the order  
2 will stand even when the settlement agreement  
3 goes away. Is that --

4 VICE CHAIR MILLER: No, I  
5 understand what you're saying.

6 MS. BROWN-ROBERTS: Okay.

7 VICE CHAIR MILLER: And I don't  
8 know whether, you know, you want to take a  
9 little time, you know, during this hearing  
10 before we get to conditions to tell us --

11 MS. BROWN-ROBERTS: Okay.

12 VICE CHAIR MILLER: -- what that  
13 language would be.

14 MS. BROWN-ROBERTS: Okay.

15 VICE CHAIR MILLER: So we could  
16 appreciate, you know --

17 MS. BROWN-ROBERTS: Okay.

18 VICE CHAIR MILLER: I think  
19 because what we'll be looking at is otherwise,  
20 if it's not limited this way, then there is  
21 going to be an adverse impact and we would  
22 want to, you know, be imposing --

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1 MS. BROWN-ROBERTS: To address it.

2 VICE CHAIR MILLER: -- that  
3 limitation.

4 MS. BROWN-ROBERTS: Right. Okay.

5 VICE CHAIR MILLER: For that  
6 reason. Okay.

7 MS. BROWN-ROBERTS: Yes, that's  
8 fine.

9 VICE CHAIR MILLER: And the hours  
10 of operation, is that just the way it has  
11 always been and --

12 MS. BROWN-ROBERTS: Yes, and I  
13 think, you know, the hours of operation is  
14 also blended with the Transportation  
15 Management Plan and all that and I think, you  
16 know, all that is worked out and it's  
17 appropriate.

18 VICE CHAIR MILLER: Thank you.

19 CHAIRPERSON GRIFFIS: Any other  
20 questions? Mr. Quin, do you have any cross of  
21 the Office of Planning?

22 MR. QUIN: No cross examination.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 MR. QUIN: Is that better?

3 CHAIRPERSON GRIFFIS: They took  
4 all the mikes away from you, didn't they?  
5 Yes, yes, yes. I got the memo. All right.  
6 If there is nothing further, thank you very  
7 much. We do appreciate it. Let's move ahead  
8 unless there's other quick clarifications from  
9 Board Members for the Office of Planning.

10 VICE CHAIR MILLER: I have one  
11 more question.

12 CHAIRPERSON GRIFFIS: Good.

13 VICE CHAIR MILLER: Like if the  
14 applicant presents proposed conditions that  
15 phase in, increases, do you have a comment on  
16 those versus your proposed conditions?

17 MS. BROWN-ROBERTS: I think we  
18 didn't want to get -- because we thought the  
19 whole phasing thing was really complicated and  
20 we didn't want to get into that, and since  
21 there was a Transportation Management Plan,  
22 that would also be monitoring those increases.

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1           In addition to that, we thought  
2           that the increases were really slight, so we  
3           thought that -- and one of the things we  
4           talked to the applicant about was to make sure  
5           that the Transportation Management Plan that  
6           is being implemented now could accommodate the  
7           185 students, you know, and then there is also  
8           the flexibility for them to make any changes  
9           or monitoring along with DDOT during the time,  
10          so that is basically why we didn't include it.

11                   VICE CHAIR MILLER:   Was there a  
12          report from DDOT?

13                   MS. BROWN-ROBERTS:   Yes.

14                   CHAIRPERSON   GRIFFIS:       Right.  
15          We'll get copies of that made.   The Board has  
16          not seen that and I note that in the Office of  
17          Planning's report that they had indicated that  
18          it had a conversation that they were  
19          anticipating a report to be in the record by  
20          the hearing, and so it looks like it came in  
21          yesterday.   We'll get that copied and  
22          distributed.   Is there anything else?   Yes?

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1                   VICE CHAIR MILLER:    I have one  
2 more question.  Often we see a condition from  
3 Office of Planning, I think, that there be  
4 some -- that it be in accordance with the TMP  
5 or something and you didn't propose any  
6 condition relating to that.

7                   MS. BROWN-ROBERTS:    We didn't  
8 because we didn't get any concrete thing from  
9 DDOT.  We were leaving it up to them to do  
10 that.

11                  VICE CHAIR MILLER:  Thank you.

12                  MS. BROWN-ROBERTS:  Okay.

13                  CHAIRPERSON GRIFFIS:  Good.  While  
14 they are making copies of that, is there  
15 anything else for the Office of Planning?  I  
16 would note that Exhibit No. 20 in our record  
17 is from the Department of Health.  Obviously,  
18 in some of the requirements of 205 it speaks  
19 much more to establishing setting up a child  
20 development center.

21                  This    is    already    established,  
22 obviously for decades and, therefore, the

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1 requirements for licensing, etcetera, are in  
2 the record, but we do have also that  
3 department on record. Anything else? We have  
4 the historic we can get into.

5 Is there anyone here representing  
6 the Cleveland Park Historic District,  
7 Cleveland Park Historic District? Indeed.  
8 Very well. Not having any representative,  
9 we'll wait for this DDOT report. Otherwise,  
10 that is it for the Government and agency  
11 reporting on this application unless you're  
12 aware of any other, Mr. Quin, that I have not  
13 noticed.

14 MR. QUIN: No, I'm not aware of  
15 any other reports.

16 CHAIRPERSON GRIFFIS: Excellent.  
17 Let's just take two moments to review this.  
18 I would note that DDOT makes it very clear  
19 that they did not support the previous  
20 application to the traffic safety concerns  
21 primarily related to drop-off and pick-up  
22 activities.

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1                   However, the applicant, as they  
2                   have indicated, has worked to address the  
3                   traffic safety concerns and reached a  
4                   settlement agreement with their neighbors in  
5                   opposition.       Accordingly, DDOT has no  
6                   objection to the application.   Interesting.  
7                   Okay.   Anything else on that?   Okay.

8                   If there is nothing further then,  
9                   no other questions from the Board,  
10                  clarifications on any Government reporting  
11                  agencies or any of those reports, we will take  
12                  note of DDOT's report, give it an exhibit  
13                  number and put it into the record.

14                  I think we can move ahead then and  
15                  ask if the ANC is present yet, ANC?   Noting  
16                  again that there is no presence from the ANC  
17                  for the presentation of their report, we will  
18                  make note of exhibit -- what is the exhibit  
19                  number on that?   Not to worry.   I'll find it.

20                  Ms. Bailey, do you show an exhibit  
21                  number on it?   I don't actually show one on  
22                  mine.

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1 MS. BAILEY: Exhibit 27, Mr.  
2 Chairman.

3 CHAIRPERSON GRIFFIS: Excellent.  
4 Exhibit 27 is the resolution of 2006/06/2 of  
5 the ANC. Is there any questions or comments  
6 on that? Mr. Quin, do you have any comments  
7 or reactions to the ANC's resolution?

8 MR. QUIN: Yes, it is also  
9 included in our statement.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. QUIN: And we very much  
12 applaud that report.

13 CHAIRPERSON GRIFFIS: Good.  
14 Anything else? Any other questions, comments?  
15 Very well. Moving along. Let me ask that all  
16 people, persons present that would like to  
17 provide testimony in support of the  
18 application at this time can come forward and  
19 make themselves comfortable at the table. You  
20 might want to sit to your right, my left, so  
21 that microphone works.

22 Ms. Miller may have a comment on

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1 the ANC letter prior to you starting. If not  
2 -- and here it is.

3 VICE CHAIR MILLER: Mr. Quin, I  
4 guess we may get to this later perhaps when we  
5 discuss conditions, and I know you applauded  
6 the order, I mean, the ANC report. Do you  
7 agree with all of its resolves, in particular  
8 No. 3, that a zoning order can -- that there  
9 be a zoning order condition that requires the  
10 applicant to enter into a negotiated  
11 construction management agreement?

12 MR. QUIN: We --

13 PARTICIPANT: His client.

14 VICE CHAIR MILLER: Oh, or your  
15 client, I'm sorry, either one. Right. Well,  
16 he applauded the order and I didn't --

17 MR. QUIN: The answer --

18 VICE CHAIR MILLER: I was just  
19 questioning whether you agree with everything  
20 in it.

21 MR. QUIN: Well --

22 VICE CHAIR MILLER: There are a

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1 couple of things that I thought you might not.

2 MR. QUIN: Well, I think we agree  
3 primarily with the fact that it supports this  
4 application. The construction agreement is  
5 something that we have to work out under our  
6 agreement, so that is going to be accomplished  
7 anyway, and I think the other conditions seem  
8 fine. They are the ones that we are already  
9 agreeing to.

10 VICE CHAIR MILLER: Thank you.

11 CHAIRPERSON GRIFFIS: Okay.  
12 Anything else? Nothing else? Very well then.  
13 A very good afternoon to you. If you wouldn't  
14 mind stating your name and address for the  
15 record, you can proceed.

16 MS. VANNEMAN: Sure. My name is  
17 Jane Vanneman and I live at 3071 Ordway Street  
18 with my husband. We have lived there since  
19 January of 1993. Our house is directly across  
20 from the NCRC property on Ordway Street.

21 I have been an active member of  
22 the neighbor group since NCRC filed its

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1 earlier application, and I was an active  
2 participant in the settlement negotiations  
3 that led to the settlement agreement between  
4 the school and the neighbors that has been  
5 discussed today. That was executed in March  
6 of 2006. I am one of the members of the  
7 Cleveland Park neighbors who signed acceptance  
8 of the settlement agreement.

9 The settlement agreement also  
10 provides and established a Standing Committee  
11 with three representatives each from the  
12 school and the neighbors. The individual  
13 neighbor signatories to the settlement  
14 agreement, which include all of the individual  
15 neighbors who were parties to the prior BZA  
16 proceeding, which is currently on appeal at  
17 the D.C. Court of Appeals, now stayed, elected  
18 me to the Standing Committee to represent the  
19 neighbors along with two other neighbor  
20 representatives.

21 As a member of the Standing  
22 Committee, I attend the meetings and receive

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1 reports and information from the school and as  
2 we begin this process, to implement the  
3 settlement agreement. I speak today as one of  
4 the neighbors, representing the neighbors, not  
5 in any kind of legal capacity, but just as one  
6 of the neighbors.

7 At the conclusion of the earlier  
8 BZA proceedings, the Board strongly encouraged  
9 the parties to settle their dispute and that  
10 is what we did. The negotiations to reach the  
11 settlement agreement took many months, lots of  
12 time, lots of expense and ultimately the  
13 parties reached a compromise, this agreement,  
14 even though it was difficult for many in the  
15 neighborhood to accept all the terms even as  
16 I'm sure it was difficult for some members of  
17 the school community to accept the terms.

18 You have a copy. We have talked  
19 about it. It's 18 pages long. We tried to be  
20 as comprehensive as possible. The neighbors  
21 and the school, I believe, have a very strong  
22 interest in seeing that this settlement

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1 agreement is followed and implemented.

2 So subject to very important  
3 conditions, some of which have been discussed  
4 this morning, the neighbors agree to support  
5 this application today, but only if, and I  
6 repeat only if, all the material terms in the  
7 settlement agreement are part of the BZA  
8 order, so that it is fully consistent. And  
9 you might look at paragraph 7 of the  
10 settlement agreement at some time that goes  
11 into some of those details.

12 I do want to caution that if the  
13 BZA order issues any order that is not  
14 consistent with the terms of the settlement  
15 agreement, that would create an opportunity  
16 for any party to terminate the settlement  
17 agreement, which then revives the previous  
18 order that otherwise would be dismissed and  
19 would ensure continuing litigation.

20 So in a very profound way, all of  
21 us, the neighbors and the school, are counting  
22 on the Board finding acceptable the terms to

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1 which we have agreed. I will just note a few  
2 of the really important elements of  
3 consideration that went into this settlement  
4 agreement, five in particular.

5 One, it's a contract enforceable  
6 by the parties with built-in private  
7 enforcement mechanisms for a variety of  
8 disputes, including arbitration and possibly  
9 Superior Court litigation, if need be. Nobody  
10 wants to go there, but it is a contract. It  
11 runs with the land. It has been recorded with  
12 the Recorder of Deeds.

13 There is an agreement to NCRC  
14 renovating its main building with a slight  
15 expansion to the footprint from the earlier  
16 order, but there is no new construction of the  
17 classroom building that was approved before  
18 and no change in the footprint to the bike  
19 shed. We did agree that NCRC could replace  
20 that in kind.

21 An important point for us in this  
22 settlement agreement was that this

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1 application, if approved, does not create the  
2 kind of substantial new capacity that could  
3 have been created with the new classroom  
4 building, and it also ratifies NCRC's current  
5 enrollment of 171, unlike the order on appeal  
6 which cut them back. So, as you can see, the  
7 parties traded off and resolved a lot of  
8 different aspects of the earlier dispute.

9 The agreement also has very  
10 carefully constructed phase-in increases in  
11 enrollment and staffing with an ability for  
12 the parties to monitor that and built-in  
13 remedies if there would be to any violations  
14 of those. And while it may seem complicated  
15 on paper, we did work it out, and I think the  
16 parties understand what it means.

17 Also, the Traffic Management Plan  
18 is an important part of this agreement. It  
19 has evolved over the years and as a member of  
20 the Standing Committee, I can tell you that we  
21 discuss it at every meeting and to the extent  
22 any problems arise, the school has been very

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1 responsive to dealing with any problems, which  
2 have been limited in nature since we started  
3 to meet.

4 And I will say that the letter  
5 that came in right before the break was from  
6 someone whom I do not know, but it appears  
7 that he may be -- Mr. Silver may be new to the  
8 neighborhood. He lives on the part of  
9 Highland that is one way that does not carry  
10 NCRC traffic.

11 And during the break, you know, we  
12 agreed that somehow or other the members of  
13 the Standing Committee will communicate with  
14 him, and it points out communicate with anyone  
15 else who may move into the neighborhood later  
16 to advise them of the Standing Committee.  
17 That is the whole point. We try to resolve  
18 these disputes and make improvements to the  
19 TMP as needed.

20 What is also related to this in  
21 response to the question about the special  
22 events, the text which implicates number of

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1 trips and traffic and parking and things like  
2 that, you might look at page 8, number 4. It  
3 does list 12 kinds of events, some of which  
4 are more than once at a time, but I also  
5 believe that we can work that out with the  
6 Standing Committee.

7 The agreement was that the school  
8 would not -- if they were to substitute  
9 anything, they would not substitute any event  
10 with anything that is substantially different.  
11 We know roughly how many board meetings they  
12 have every year, so I think that is something,  
13 again, we can work out with the Standing  
14 Committee.

15 The final point I would like to  
16 mention that is really, really crucial to the  
17 neighbors is the 20 year term to the  
18 agreement. This provides a great deal of  
19 certainty and stability for all parties, the  
20 school in planning its future, and the  
21 neighbors in understanding what its future  
22 will be with the school as a neighbor. So the

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1 20 year term is a key point.

2 So if any of these material  
3 conditions and others in the settlement  
4 agreement are not reflected in the final BZA  
5 order, we would not be in a position to  
6 support it, but I also want to make clear that  
7 the neighbors do not want to reopen this  
8 dispute and I know the school doesn't.

9 We want to implement the  
10 settlement agreement that was reached after a  
11 lot of back and forth and much thought and  
12 involvement by a lot of people, and so we  
13 strongly encourage the BZA to issue its order  
14 consistent with the settlement agreement that  
15 you have before you.

16 CHAIRPERSON GRIFFIS: Excellent.  
17 Thank you very much. That's two points that  
18 are not necessarily similar. Issuing an order  
19 that is consistent with the settlement  
20 agreement and including our order as a  
21 condition of compliance with the settlement  
22 agreement are two different things.

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1           Are you of the understanding that  
2           the settlement agreement is a binding  
3           contract?

4           MS. VANNEMAN: Absolutely, yes.

5           CHAIRPERSON GRIFFIS: And it's  
6           enforceable?

7           MS. VANNEMAN: Yes. The parties  
8           can enforce it as a contractual matter and we  
9           included a number of specific --

10          CHAIRPERSON GRIFFIS: Sure, sure.

11          MS. VANNEMAN: -- privately  
12          enforceable remedies within the document to  
13          the extent any major disputes arose.

14          CHAIRPERSON GRIFFIS: Are appeal  
15          provisions provided in that settlement  
16          agreement?

17          MS. VANNEMAN: There are  
18          provisions for going to arbitration after  
19          certain days of notice and things like that if  
20          there were --

21          CHAIRPERSON GRIFFIS: So what is  
22          the importance of having it as a listed

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1 condition and in the order that we issue?

2 MS. VANNEMAN: Any -- the BZA  
3 order governs the operations of the school and  
4 if there is anything in the order that is  
5 inconsistent with the agreement, you know,  
6 with a material term, then it could completely  
7 reopen the earlier dispute.

8 CHAIRPERSON GRIFFIS: Sure.

9 MS. VANNEMAN: Which nobody wants.  
10 And so what is key in terms of the BZA order  
11 that governs their operations is to make sure  
12 that the order is consistent with the  
13 agreement.

14 CHAIRPERSON GRIFFIS: So you're  
15 asking us to be consistent with the settlement  
16 agreement?

17 MS. VANNEMAN: Yes, and include at  
18 least the terms that the school has proposed  
19 at a bare minimum and --

20 CHAIRPERSON GRIFFIS: What is --

21 MR. QUIN: Which are set forth  
22 under Tab H.

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1 CHAIRPERSON GRIFFIS: Oh, your --  
2 the proposed conditions. Okay. Ms. Miller?

3 VICE CHAIR MILLER: I have a few  
4 comments and then I have a few questions for  
5 you.

6 MS. VANNEMAN: Sure.

7 VICE CHAIR MILLER: My first  
8 comment is this probably goes to all the  
9 parties, but I really want to congratulate you  
10 all on coming to that, such a comprehensive  
11 agreement that appears to have brought peace  
12 to your corner of the neighborhood.

13 MS. VANNEMAN: Thank you.

14 VICE CHAIR MILLER: My second  
15 comment is that that settlement agreement is  
16 certainly something that is a major piece of  
17 evidence in this case, I think, that is a  
18 major factor that represents some facts that  
19 go to the issues that we have to decide, such  
20 as ways in which adverse impacts are going to  
21 be mitigated, etcetera.

22 But what I want to say is that

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1 we're put on the Board to enforce our  
2 regulations and we need to look at our  
3 regulations when we make our decisions, not  
4 necessarily to a private agreement, that we  
5 can't just say, okay, we're going to decide  
6 this in accordance with your agreement.

7 And I don't think that they are  
8 necessarily inconsistent at all, but the  
9 standard that I would be looking at would be  
10 in 205 and it goes to, in particular, that  
11 there be no objectionable traffic conditions  
12 and no unsafe conditions, you know, that  
13 result from the school's presence there.

14 That is, you know, a little  
15 synopsis, so I just wanted to put that on the  
16 table. I don't think they should be  
17 consistent. I think that everybody here wants  
18 the school to be operating in a way that  
19 doesn't create any adverse impacts on the  
20 neighborhood.

21 One question I have, and this kind  
22 of came up in this morning, because we had a

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1 decision on another case where we were making  
2 a clarification about another school, what the  
3 term goes to.

4 If you're asking for a 20 year  
5 term on this approval, is that on the -- does  
6 that go to the existence of the school or does  
7 it go to 20 years to see whether the  
8 enrollment figure is the right figure or 20  
9 years to see if the TMP is right, as opposed  
10 to any other broader issues that -- you know,  
11 it doesn't go to the addition or do you know  
12 what I'm saying?

13 MS. VANNEMAN: Well, I think the  
14 20 years --

15 VICE CHAIR MILLER: What is the  
16 point of the 20 year term?

17 MS. VANNEMAN: The point of the 20  
18 years from the neighbors was to provide some  
19 kind of stability and certainty to what the  
20 level of operations of the school would be for  
21 those 20 years, and to know that we wouldn't  
22 have to engage in, you know, a battle every

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1 five or six years about the school's  
2 operations.

3 And I think as a member of the  
4 Standing Committee and in speaking with other  
5 neighbors, that is of tremendous benefit to  
6 the neighbors who live there as well as to  
7 anyone else who might move into the  
8 neighborhood to have some certainty as to what  
9 the operations will be.

10 I think everyone realized that  
11 towards the end of the 20 years when the  
12 settlement agreement contract expires, then  
13 the neighbors and the school will have to  
14 address whatever issues might arise, which no  
15 one can predict at this point, but the 20  
16 years was very important from the neighbors'  
17 point of view to know that we had an  
18 agreement. Everybody gave something.  
19 Everybody got something.

20 It's not perfect, but in the sense  
21 that -- I mean, nobody got everything that  
22 they wanted. The school didn't. The

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1 neighbors didn't, but we reached a very  
2 comprehensive settlement that people now know,  
3 good, you know, if the BZA issues an order  
4 that is consistent with this, then the  
5 neighbors and the school can get along and try  
6 to reestablish the relationships that we had  
7 before, which I think we have really been  
8 doing through the Standing Committee and other  
9 just communications within the neighborhood  
10 with the neighbors and the school.

11 VICE CHAIR MILLER: Okay. I guess  
12 I just want to -- just looking at our own  
13 regulations, I understand that it's a major  
14 feat that you all have this settlement  
15 agreement and it's great. We have to look at  
16 our regulations.

17 MS. VANNEMAN: I understand.

18 VICE CHAIR MILLER: And I just  
19 want to get the facts, you know, that I need  
20 to weigh. And with respect to the 20 years,  
21 I guess my question is like, for instance, on  
22 the enrollment figure or the faculty figure

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1       that we have in place, it could be 20 years,  
2       it could be longer.

3               Do you feel that you don't have  
4       confidence enough in that figure that you need  
5       to see if that figure is really going to work,  
6       because sometimes we put terms on because  
7       we're not sure if something is going to work,  
8       so we put a term on it to see?

9               MS. VANNEMAN:    The neighbors, I  
10       know, do not want anything less than a 20 year  
11       term and what we did in structuring the very  
12       limited enrollment and staff increases, phased  
13       in after the work is done on the main  
14       building, so that there would be -- like NCRC  
15       would do the construction on the main  
16       building. Then enrollment and staffing could  
17       increase slightly for a three year period,  
18       increase slightly a little more than that in  
19       the next three year period.

20               There is a number fixed in there  
21       with the four slots, you know, give or take  
22       for the admissions process.    But if, for

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1 example, NCRC went over that, that number plus  
2 four, then there is a built-in mechanism for  
3 NCRC having to reduce it the following year or  
4 years, so that on average the enrollment is  
5 capped and limited.

6 And to the extent there is an  
7 increase, which is up to 10, it's phased in  
8 after an initial status quo period and then I  
9 think three year terms of phased-in increases  
10 for enrollment in staffing. So we believe it  
11 can work.

12 CHAIRPERSON GRIFFIS: I think what  
13 Ms. Miller is trying to get to is the question  
14 is what is the 20 years actually mitigating?  
15 What is the adverse impact that it's trying to  
16 assess?

17 You indicated that it gives some  
18 stability to the neighbors because they know  
19 what the operations are, but they will know  
20 that whether it's a 20 year term or not. 20  
21 years doesn't go to that.

22 MS. VANNEMAN: Well --

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1                   CHAIRPERSON GRIFFIS:   At the end  
2                   of 20 years, if that changed they would have  
3                   to come back and revisit in a special  
4                   exception. At the end of 50 years, they would  
5                   have to do it. At the end of one year, they  
6                   will have to do that. So what is the 20 years  
7                   actually addressing is what Ms. Miller's  
8                   question is.

9                   MS. VANNEMAN:       The 20 years  
10                  addresses that if the Board approves it, then  
11                  the neighbors don't have to face another round  
12                  of hearings in terms of what numbers might be.  
13                  It will be fixed according to the numbers to  
14                  which we have agreed and limited and capped.  
15                  Now, everybody knows that after --

16                  CHAIRPERSON GRIFFIS:   So let's say  
17                  it's 50 years. Is there a problem with 50?

18                  MS. VANNEMAN:       Well, we have a  
19                  minimum of at least 20. I don't know if the  
20                  school would agree to anything more than that.  
21                  I mean, we --

22                  CHAIRPERSON GRIFFIS:   Okay.

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1 MS. VANNEMAN: I think parties --

2 CHAIRPERSON GRIFFIS: I  
3 understand. I think I understand your  
4 position.

5 MS. VANNEMAN: The parties realize  
6 that there is, you know, a certain amount of  
7 time you can fix. 50 years might be  
8 unreasonable for the school.

9 VICE CHAIR MILLER: I have another  
10 question on a different topic, and I probably  
11 could have asked this to the applicant, as  
12 well, but it sounds like there is a really  
13 good TMP in place.

14 Is there a flexibility in the  
15 settlement agreement that, you know, sets  
16 forth -- the TMP is in the settlement  
17 agreement. Is that right?

18 MS. VANNEMAN: It's attached to  
19 the exhibit.

20 VICE CHAIR MILLER: Attached.  
21 Okay. Is there flexibility for that to  
22 change?

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1 MS. VANNEMAN: Absolutely, yes.

2 VICE CHAIR MILLER: But the way  
3 it's phrased, even with the changes, there is  
4 something you know you can count on that will  
5 still be in place during the term that you're  
6 even suggesting?

7 MS. VANNEMAN: Right.

8 VICE CHAIR MILLER: The 20 years.

9 MS. VANNEMAN: At a minimum I  
10 would believe that we would have what we have  
11 now plus the Standing Committee and anybody  
12 else in the neighborhood would work towards  
13 making whatever changes might be necessary.

14 VICE CHAIR MILLER: Okay. So it  
15 does allow for change.

16 MS. VANNEMAN: Over time.

17 VICE CHAIR MILLER: Even over  
18 time. Good.

19 MS. VANNEMAN: Yes.

20 VICE CHAIR MILLER: And the  
21 events, can you articulate what kind of  
22 limitation or not a limitation that there

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1 should be on the events?

2 MS. VANNEMAN: Well, the events in  
3 that exhibit were listed to 12 different types  
4 of events. Some are single events like the  
5 Pumpkin Party. Others are, it's true, more  
6 than one event like board meetings. I believe  
7 that the neighbors and the school know roughly  
8 how many, you know, more than one any of these  
9 events might be and the goal, I think, of the  
10 agreement was to make sure that there aren't  
11 any more than that.

12 So, for example, if there is a  
13 board meeting every month, I'm not exactly  
14 sure of how often it is, but we know that.  
15 That's okay, but there cannot be any  
16 additional events or if there are  
17 substitutions of events for what is listed,  
18 they have to be of the same type of nature and  
19 impact on the neighborhood.

20 So, again, I believe that's  
21 something. To the extent there is any  
22 ambiguity, if there is any, I believe it's

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1 something the Standing Committee can work out.

2 VICE CHAIR MILLER: Great. Thank  
3 you very much.

4 CHAIRPERSON GRIFFIS: Anything  
5 else? Questions, clarifications, cross?

6 MR. QUIN: No cross. Thank you.

7 CHAIRPERSON GRIFFIS: Good.  
8 Absolutely. Very well. Thank you very much.

9 MS. VANNEMAN: Thank you.

10 CHAIRPERSON GRIFFIS: We do  
11 appreciate it. Is there anyone else here to  
12 provide testimony in support of the  
13 application, in opposition to the application?  
14 Is there anyone else here present, persons  
15 that would like to provide testimony in any  
16 frame?

17 Very well. Not noting any other  
18 persons to provide testimony, let's move ahead  
19 then. I don't have any other -- oh, we should  
20 take notice. We did make note of the letter  
21 that came in today in raising concerns. We  
22 will address that perhaps or have the

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1 applicant address those elements that were  
2 brought forward.

3 Very well. And I have no record  
4 of any other filings of letters in support or  
5 in opposition unless, Mr. Quin, you're aware  
6 of any other submissions in the record that I  
7 haven't acknowledged.

8 MR. QUIN: No, I'm not.

9 CHAIRPERSON GRIFFIS: Excellent.  
10 Very well then. I think we are prepared to  
11 move forward and have you present any rebuttal  
12 witnesses and/or conclusions.

13 MR. QUIN: Well, unless there are  
14 questions, I had not planned to call any  
15 witnesses, but I did want to summarize and  
16 also respond to the letter --

17 CHAIRPERSON GRIFFIS: Excellent.

18 MR. QUIN: -- that you received.  
19 Unfortunately, Mr. Silver appears to be a new  
20 neighbor, not that it's unfortunate that he is  
21 a neighbor, but that he just is getting  
22 involved in this. And it's interesting to

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1 note -- so that in point, he has not  
2 communicated either to the school or to the  
3 Standing Committee.

4 If you can look at the chart.  
5 This is Newark Street, the map at the bottom,  
6 Newark Street, east/west. The turn into  
7 Highland Place is at the far right of the  
8 aerial photograph and Highland Place comes up.  
9 The school is here and then the turn out back  
10 to Newark is forced, because this portion of  
11 Highland Place is one way west eastbound.

12 So Mr. Silver lives somewhere in  
13 the area west of 33<sup>rd</sup> Street, which is one way  
14 to the east, so that it's important to note  
15 that he is not on the path of the school's  
16 routing for the drop-off. And it is important  
17 to note that the people who are on Highland  
18 Place most affected are involved in this  
19 agreement just by comparison.

20 The other thing that I think is  
21 really important, in the spirit of the way the  
22 outreach has gone from the school and the

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1       receptivity of the neighbors, the school  
2       commits to make -- to contacting Mr. Silver.

3               And, also, as was just stated  
4       earlier, Mr. Silver can certainly come to the  
5       Standing Committee and try to address whatever  
6       concerns he has. So it's -- his letter is not  
7       lost in the darkness or some great abyss.  
8       It's something that the school will be very  
9       sensitive to.

10              I think that really is all I  
11       wanted to say about the letter unless there  
12       are questions, because I think that addresses  
13       it.

14              The question of conditions, we  
15       submitted in accordance with the requirements  
16       of the agreement those conditions set forth  
17       under H. And, of course, what that really  
18       does for the Board under its jurisdiction is  
19       the maximum number of students and the maximum  
20       number of faculty and staff. That is your  
21       normal condition in terms of numbers. The  
22       phasing is a step to get to that number that

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1 is an agreement between the parties.

2 On the condition that relates to  
3 the 20 year term, it's our position that an  
4 order of the Board without a term is not  
5 inconsistent with the 20 year agreement of the  
6 neighbors. Obviously, at the end of that 20  
7 year term, if something else happens in terms  
8 of numbers or some amendment to the site, they  
9 have to come back to the Board of Zoning  
10 Adjustment if that's the law at that time.

11 And so I think everybody is  
12 protected, but the school very much will --  
13 you know, supports this agreement, obviously,  
14 or we wouldn't be here and we think that the  
15 real problem in terms of having a condition is  
16 the lack of flexibility in terms of mortgages  
17 and in financing, because this is going to be  
18 -- I don't know the actual number nor I think  
19 does the school know the actual number, but we  
20 know that it's over several million dollars in  
21 construction costs and that would be a loan  
22 which they would like to amortize over a

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1 period of time.

2 And if the interest rates are such  
3 that by a longer mortgage or the payments are  
4 less, that is very important for the school.  
5 So that would be one of the reasons that we  
6 would not want a term in the order.

7 Other than that, we would -- are  
8 here to answer any additional questions. And  
9 I would also point out that this not an  
10 interim plan for a school. It's not a campus  
11 plan for a college or a higher education  
12 facility and like other cases that you have  
13 had, where there is a major investment that  
14 has to -- a capital improvement, the Board has  
15 not put limitations on, because the capital  
16 improvement is something that is a permanent  
17 improvement.

18 So with those items, unless there  
19 is a question, we would submit that we have  
20 met the test, that our statement is in the  
21 record. We request your earliest favorable  
22 decision. We will draft an order and submit

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1 it to the Board, hopefully in accordance with  
2 your favorable ruling.

3 We would love to have a decision  
4 today if that is possible. And unless there  
5 is something else that my client would like to  
6 state, I think we're prepared to stand on the  
7 record at this point.

8 CHAIRPERSON GRIFFIS: Excellent.  
9 Thank you very much. Follow-up questions,  
10 clarifications, any additional information  
11 that the Board needs at this time? Ms.  
12 Miller?

13 VICE CHAIR MILLER: Does the TMP--  
14 I was just trying to look through it myself,  
15 but I'm sure you know this. Does the TMP in  
16 itself provide the flexibility to change in  
17 consultation with the Standing Committee that  
18 we have heard about or is that just --

19 MR. QUIN: Yes, it does.

20 VICE CHAIR MILLER: It does.

21 MR. QUIN: But if you want more  
22 detail, Carrie, do you want to address that?

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1 MS. IRVIN: Yes, we have those in  
2 more detail.

3 VICE CHAIR MILLER: Well, maybe  
4 you can just tell me where it is. The  
5 flexibility is built into the TMP. Is that  
6 right?

7 MS. IRVIN: The TMP is meant to be  
8 a document that is -- we issue it every year  
9 to a new group or, you know, our group of  
10 parents for that year and they have to sign  
11 it. Even returning parents sign a new one.  
12 So, by definition, we can change it and, in  
13 fact, we can change it every month if we  
14 wanted to.

15 It's meant to meet the conditions  
16 if they change that we're faced with, so it's  
17 never meant to be and it's not stated that it  
18 is a fixed document in any way if that's what  
19 you're asking.

20 VICE CHAIR MILLER: No, I'm sorry.  
21 Your voice dropped at one point. I guess in  
22 the event where we're considering conditions

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1 and there is a condition proposed by you all  
2 anyway with respect to the TMP, you know,  
3 sometimes there is a concern if this is a 20  
4 year period or longer just to make sure that  
5 there could be changes if you all decided that  
6 that was appropriate.

7 I'm just wondering is that in the  
8 TMP, that changes can be made to it or --

9 MS. IRVIN: To it.

10 VICE CHAIR MILLER: -- is that  
11 your practice?

12 MR. QUIN: If you look at page 9  
13 of the agreement as --

14 VICE CHAIR MILLER: No, but is it  
15 in -- okay.

16 MR. QUIN: It's in --

17 VICE CHAIR MILLER: I wasn't  
18 looking at the settlement agreement though.  
19 I'm looking at the TMP.

20 MR. QUIN: The TMP. It's under  
21 Tab 4.

22 MS. IRVIN: I think the answer to

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1 your question is there is nothing in the TMP  
2 that specifically says it can be changed and  
3 parents are still obligated to follow it.  
4 What we put in the agreement is that the  
5 school must maintain a Traffic Management  
6 Plan, the goal of which is to keep the -- you  
7 know, minimize the impact of -- right now it's  
8 this one. It could be a comparable one.

9 If it's not this one, then that  
10 needs to have the agreement of the Standing  
11 Committee, but it does -- I mean, we could add  
12 if needed certainly a phrase or a clause in  
13 our Traffic Management Plan that says the  
14 school retains the right to make changes to  
15 this Traffic Management Plan, if that's what  
16 you're asking.

17 MR. QUIN: The key here, if you  
18 look at page 9 of the agreement, I'm sorry to  
19 refer back to the agreement, but it says any  
20 changes, any member of the Standing Committee  
21 may propose a change to the committee, changes  
22 to the Transportation Management Plan. Any

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1 such changes shall be subject to the review  
2 and approval of the majority of the Standing  
3 Committee.

4 So it's one of these negotiated  
5 items. If the Board felt that some other  
6 teeth were required in your order, which I  
7 don't know why you would, but if you did for  
8 our Transportation Management Plan, I think  
9 you can require a Transportation Management  
10 Plan and if you want us to, we can submit it  
11 to the Department of Transportation for a  
12 review, but I think that's maybe a little  
13 bit --

14 VICE CHAIR MILLER: No, no, no,  
15 no, no.

16 MR. QUIN: Okay.

17 VICE CHAIR MILLER: My point was--  
18 and I think that is good language on page 9 of  
19 the settlement agreement, but I don't think  
20 it's in your proposed conditions.

21 MR. QUIN: That's correct.

22 VICE CHAIR MILLER: So that if the

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1 Board, you know, in thinking about conditions  
2 wanted to require a Transportation Management  
3 Plan --

4 MR. QUIN: Sure, you could adopt  
5 that.

6 VICE CHAIR MILLER: -- that's a  
7 good paragraph, yes.

8 MR. QUIN: Yes.

9 VICE CHAIR MILLER: Okay. That's  
10 my point.

11 MR. QUIN: Thank you.

12 VICE CHAIR MILLER: My second  
13 question goes to the events again. If the  
14 Board were to have a limitation on events, I  
15 think that Office of Planning was going to  
16 revisit what they recommended. I don't think  
17 you recommended a condition to that.

18 MR. QUIN: We would have no  
19 objection.

20 VICE CHAIR MILLER: You would have  
21 no objection to that, and what -- could you  
22 give us any -- your opinion on what that

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1 condition would say?

2 MR. QUIN: Well, the condition  
3 would incorporate those that are on Tab 3 to  
4 the agreement. Maybe, Carrie, you had another  
5 comment.

6 MS. IRVIN: I mean, we wouldn't.  
7 We are not seeking events as a condition. To  
8 us it's in a different category than sort of  
9 the enrollment in the traffic and I think it  
10 was considered by the parties who negotiated  
11 the agreement to be of a different level of  
12 concern.

13 But if you -- you know, that being  
14 said, we're comfortable with, again, language  
15 in the agreement which basically says it  
16 doesn't limit us to having only these events  
17 that are called by these exact names for the  
18 next 20 years.

19 It says these are the events we  
20 have right now. We aren't supposed to have  
21 more events or bigger events or different  
22 events and if we make any changes, we need to

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1 do it through the Standing Committee. So,  
2 again, this is meant to be the events we have  
3 now. The neighbors agree with that. We have  
4 room to change it. We are not permitted to  
5 increase it and any changes need to go through  
6 the Standing Committee.

7 VICE CHAIR MILLER: And is that in  
8 the settlement agreement, too, or not?

9 MS. IRVIN: That language?

10 VICE CHAIR MILLER: You know,  
11 about that you're only having these events and  
12 if you want to make changes, you go through  
13 the Standing Committee?

14 MR. QUIN: Yes.

15 CHAIRPERSON GRIFFIS: There it is.

16 VICE CHAIR MILLER: Okay. Good.

17 MS. IRVIN: It's paragraph 4.

18 CHAIRPERSON GRIFFIS: Attachment 3  
19 is part of your settlement agreement, correct?  
20 Okay. Attachment 3 is going to be past the  
21 signature page.

22 MS. IRVIN: Okay. It's paragraph

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1 4A on page 8 of the settlement agreement, and  
2 I have been advised that it does, the language  
3 does, include the opportunity for us to add  
4 events in addition to that list with the  
5 approval of the Standing Committee, which that  
6 would be important to us to include in the  
7 language as well.

8 CHAIRPERSON GRIFFIS: Other  
9 questions?

10 VICE CHAIR MILLER: The hours of  
11 operation that Office of Planning identified  
12 in the conditions are accurate and acceptable  
13 to the applicant?

14 MS. IRVIN: Yes, they are.

15 VICE CHAIR MILLER: Okay.

16 CHAIRPERSON GRIFFIS: Do events  
17 happen outside the hours of operation?

18 MS. IRVIN: Yes, they do.

19 MR. QUIN: That's covered.

20 MS. IRVIN: That's covered in the  
21 events paragraph.

22 VICE CHAIR MILLER: Okay. The

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1 hours of operation, 8:00 to 5:00, basically  
2 that represents the school's operations. Does  
3 it mitigate any adverse conditions by putting  
4 a condition in there to that effect?

5 MR. QUIN: Is it likely that you  
6 would increase in any way the school hours,  
7 the school operation hours?

8 MS. IRVIN: Is that what you're  
9 asking?

10 MR. QUIN: No, that's what I'm  
11 asking for a different reason.

12 MS. IRVIN: It's not likely. It's  
13 not. No, it's not likely that we would  
14 increase the hours of our school operation.

15 VICE CHAIR MILLER: Mr. Quin, can  
16 I ask you? I just want to get your opinion on  
17 the record.

18 If there were no term on the  
19 school, wouldn't it lock you in longer with  
20 respect to the numbers of children enrolled  
21 and the faculty, that in fact it seems like  
22 that would be a stable -- it might be a stable

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1 thing to do, that there would be more  
2 predictability that, in fact, 20 years from  
3 now, 25 years from now you would still be  
4 required to have those numbers?

5 MR. QUIN: I think we understand  
6 that. I mean, if you put -- if you enter an  
7 order that says maximum 185 and 44 faculty and  
8 staff, that does bind us forever until we come  
9 in to change and I think we understand that.  
10 And it provides -- it also is consistent with  
11 the agreement.

12 It's not that we, you know, the  
13 school in their wildest dreams, I guess, would  
14 say don't put any conditions whatsoever. Let  
15 us operate and leave us alone. But that's not  
16 where we are. I think it's important that we  
17 do have some constraints and it seems to me  
18 the most logical one is to pick up the 185 and  
19 44 and at the end of 20 years, that's going to  
20 stay unless the school says we want some  
21 amendment.

22 VICE CHAIR MILLER: I have one

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1 other question. You made a point about  
2 amortizing the loan and the longer -- being  
3 related to a longer term.

4 MR. QUIN: Yes.

5 VICE CHAIR MILLER: What kind of  
6 years were you talking about, just --

7 MR. QUIN: Well, obviously, I'm  
8 hoping for --

9 VICE CHAIR MILLER: I mean, that  
10 affects the loan. I mean, they go long. They  
11 go 50 years? I mean, what are these, the  
12 loans that you were --

13 MR. QUIN: Well, I'm thinking  
14 about a loan that would go -- first of all,  
15 you would probably have a construction loan  
16 that then would be turned into a permanent  
17 loan of some sort, and that is solely going to  
18 depend on the fund raising, but I suspect that  
19 it's going to be a continuing financial  
20 obligation for many years.

21 And all I was saying is we would  
22 appreciate not being limited to 20 years, so

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1       that if a loan came out as a quarter point  
2       lower for a 25 year loan or a 30 year loan,  
3       that that could be undertaken.

4               And even if it's paid off in a  
5       shorter period, the amount of required payment  
6       per month is much less and that is a very  
7       practical solution that we have in many  
8       commercial and nonresidential, for example.  
9       Well, many of the major projects along  
10      Wisconsin Avenue without getting into specific  
11      ones that required -- that had some bonds  
12      involved also dealt with the term of years.

13              VICE CHAIR MILLER: Thank you.

14              CHAIRPERSON GRIFFIS: Anything  
15      else? Any other questions, clarifications?  
16      We're going to take a 10 minute break and  
17      we're going to come back.

18              MR. QUIN: May I add one more  
19      point?

20              CHAIRPERSON GRIFFIS: Yes.

21              MR. QUIN: We know that you are  
22      measuring whether to grant the case, at least

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1 I think you are, and what conditions you would  
2 impose. We have been listening very carefully  
3 to your discussion and I think we can pick up  
4 in a draft order those. I know you have to  
5 approve the draft order, but if there were an  
6 indication, if you could approve the case  
7 today, it would be quite nice for us. If you  
8 can't, that's also understandable.

9 CHAIRPERSON GRIFFIS: Well, what  
10 would we do with your draft order if we  
11 approved today?

12 MR. QUIN: You could state  
13 generally the areas that you want the  
14 conditions in and we will submit those  
15 conditions --

16 CHAIRPERSON GRIFFIS: I see.

17 MR. QUIN: -- as part of the draft  
18 order.

19 CHAIRPERSON GRIFFIS: I see. I  
20 didn't understand that last time. I thought  
21 you would actually submit a draft finding and  
22 conclusions and then we would set this for a

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1 decision, but you're saying we could  
2 conceivably go with a Bench decision and you  
3 would follow-up with a draft order?

4 MR. QUIN: Precisely.

5 CHAIRPERSON GRIFFIS: Interesting.  
6 Okay. Give us 10 minutes.

7 MR. QUIN: Thank you.

8 (Whereupon, at 2:36 p.m. a recess  
9 until 3:04 p.m.)

10 CHAIRPERSON GRIFFIS: Very well.  
11 We appreciate your patience. It was a  
12 productive but fast Executive Session. I  
13 think we're prepared, if I understand my  
14 Board's direction, to go right into a  
15 deliberation at this time, unless there are  
16 any clarification questions that the Board  
17 might have for the applicant.

18 Very well. Not noting those, I  
19 think it would be most expeditious to move  
20 ahead under a motion then, take full  
21 deliberation on the elements of the motion and  
22 proceed in that fashion.

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1           That being said, I would move  
2 approval of Application 17544 of the National  
3 Child Research Center for the special  
4 exception for the child development center and  
5 we'll get into the specifics of the children  
6 and staff, although it is listed in the  
7 announcements of 185 children maximum, 44  
8 staff, under section 205 for the premises of  
9 3209 Highland Place, N.W.

10           I will be discussing conditions as  
11 part of that motion, but would ask for a  
12 second for discussion.

13           VICE CHAIR MILLER: Second.

14           CHAIRPERSON GRIFFIS: Thank you  
15 very much. Let me address first the variance  
16 relief that was also submitted in terms of the  
17 section 21 and it was, as listed in the  
18 applicant's submission, a precautionary, not  
19 their words, but precautionary address of the  
20 variance.

21           Frankly, it's my view, and I will  
22 take comments from other Members, that there

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1 is no parking relief required and, therefore,  
2 a variance would not be needed. It is obvious  
3 in anticipation of potential change of the  
4 regulations, but those regulations are not  
5 standing and so to date, there would not be a  
6 requirement for parking to be granted relief  
7 from. And I believe the specific section is  
8 2100.5, but I will verify that as we go ahead  
9 and then take comments on that from the Board,  
10 if there are any.

11 VICE CHAIR MILLER: I would agree.

12 CHAIRPERSON GRIFFIS: Very well.  
13 If there's no further comments on that, let's  
14 move directly into it. Of course, looking at  
15 this, we looked at the entire section of 205.  
16 As we began this, of course, we indicated that  
17 it's interesting that child development  
18 centers under section 205 are set up as if one  
19 is always establishing them.

20 I think in the past procedure,  
21 that is the past 40 years of procedure or  
22 more, there may at times be time limits put

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1 on, oftentimes of new, old. That is not the  
2 case here. However, we still have the same  
3 regulations and requirements to walk through.

4 I will summarize many of them,  
5 because I don't think most are pertinent in  
6 terms of finding compliance with the special  
7 exception. And I will also say that the  
8 Office of Planning's report has done an  
9 excellent job in addressing all of those  
10 elements in their analysis and review.

11 Certainly, the center has shown  
12 that it's capable of meeting applicable codes  
13 and licensing. The issue of 205.3, which goes  
14 to the location and design to create no  
15 objectionable traffic conditions and no unsafe  
16 conditions for picking up and dropping off  
17 children.

18 What we have in the record of this  
19 special exception application is a substantial  
20 document that shows the communication between  
21 the school and the surrounding residents, and  
22 in that document it addresses certain

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1 conditions and the address of those conditions  
2 and how they might be mitigated or how they  
3 might be substantively dealt with. That to me  
4 is a substantial finding of fact that certain  
5 elements have been addressed.

6 In terms of evidence of potential  
7 adverse impact, frankly, it doesn't develop  
8 out. Specifics don't develop out for us to  
9 condition outside of that which is being  
10 treated within the transportation management  
11 procedures.

12 And what does this all mean? It  
13 means that I don't believe -- I think -- I  
14 believe that we have, in fact, had the base  
15 information addressed factually and  
16 evidentiary in this case and that a remedy of  
17 condition has been provided and that remedy  
18 is, as I would say, well-conditioned for our  
19 order in the applicant's Attachment H, which  
20 addresses the Traffic Management Plan and the  
21 traffic management procedures.

22 I will get into the specific

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1 language of that in a bit as we look at actual  
2 conditions, but the importance of it is, one,  
3 there is flexibility to address conditions  
4 that change of which they will. The other is  
5 that it is provided for all that need to come  
6 into compliance with it. The other is that it  
7 is evaluated and it is, in fact, executed or  
8 there is some sort of condition of which, a  
9 punitive condition, if it isn't complied with  
10 for the individual and for the school. I  
11 think that is clearly addressed.

12 I also note that DDOT in their  
13 report also indicated that the already  
14 implemented Traffic Management Plan and  
15 procedures have rendered great success and  
16 they found that there was no objection to  
17 their support of this going forward as  
18 presented.

19 205.4 deals with the parking,  
20 which we have addressed not only in the not  
21 need for the variance, but also under 2100.5,  
22 that the school has never provided on-site

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1 parking and under our regulations is not  
2 required to do so.

3 205.5 has the Board address  
4 whether there is any outdoor play space  
5 provided would be located and designed, so  
6 there would be no objectionable impacts.  
7 Again, the Office of Planning does a good  
8 assessment of this. I think that in this case  
9 presentation and in some -- well, in this case  
10 presentation we see that there has been no  
11 evidence that has arisen that would lend  
12 itself to testimony supporting the location of  
13 the outside play area as potentially creating  
14 adverse impacts.

15 In the settlement agreement, there  
16 is address of not having any amplified  
17 equipment used in the outside area and I think  
18 that would be the only element that may  
19 potentially have some sort of adverse impact  
20 and it is obviously addressed in an outside  
21 agreement and, therefore, is enforceable on  
22 that measure.

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1           In terms of 205.6, "The required  
2       treatment and way of design, screening,  
3       plantings, parkways, areas, signs or other  
4       requirements shall deem necessary to protect  
5       the adjacent nearby properties." Again, I  
6       don't think the record has any evidence or  
7       elements that speak to how the design might,  
8       in fact, have an adverse impact to the nearby  
9       or adjacent properties and, therefore, I don't  
10      think I am recommending any other design  
11      changes.

12           Outside of Mr. Etherly moving some  
13      of the round windows on the addition that we  
14      would -- there would be no reason for the  
15      Board to get into the design elements of that.  
16      Of course, that is a little joke, so we won't  
17      be changing any of the round windows, Mr.  
18      Etherly. Very well.

19           In fact, speaking to that, I would  
20      go to -- of course, I have familiarity with  
21      the last application and the drawings and I  
22      recall thinking and I recall numerous

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1        comments, but I'll talk about just my own view  
2        of that and the current drawings that are  
3        submitted here.

4                    One, I think it's a phenomenal job  
5        in two respects. First, in the presentation  
6        themselves, their beautiful drawings that  
7        represent what, in fact, is being proposed.  
8        But the second is I find it now speaks  
9        directly to the design as it is being proposed  
10       here. The connection, the symmetry, the  
11       massing in this current iteration I find is  
12       not only just compatible, but I think  
13       incredibly successful.

14                   You know, really I thought that  
15       the illustration and one might say just the  
16       point of the design, if you had to point to  
17       one piece of the design that is emblematic of  
18       it all, is the treatment of the elevator  
19       override, which is articulated as a chimney,  
20       it absolutely disappears into a building.

21                   I would imagine that once this is  
22       built, as they start ticking away the 20 years

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1 of the settlement agreement, that in those  
2 years it will age and one will lose thought of  
3 any sort of time period of which each part was  
4 done. Meaning, it seems to flow incredibly  
5 well together and may be mistaken within a  
6 matter of course as original pieces of the  
7 original existing building.

8 Moving on to any off-site play  
9 area, we have no evidence that there is being  
10 proposed off-site play area, so that would not  
11 be of import to address. And lastly, we also  
12 don't have any evidence in the record at 206.8  
13 that would discuss the fact that there might  
14 be another child development center within a  
15 certain radius of which the Board could, in  
16 fact, approve. However, it would obviously be  
17 something that we would have needed to have  
18 addressed.

19 So going to conditions, I think  
20 that we have four conditions in my  
21 deliberation on this. The first I have  
22 indicated. Of course, I won't list that

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1 first, but first would be the adoption of the  
2 language that is being proposed by the  
3 applicant in the Traffic Management Plan.  
4 I'll go into that a little bit further.

5 But the first actual condition I  
6 would have from actually utilizing Office of  
7 Planning's conditions and that would be the  
8 maximum number of children shall not exceed  
9 185 and shall be phased in as shown on  
10 Attachment 3. Although, I don't necessarily  
11 need -- actually, I'm not asking to have the  
12 phased in as part of that condition in the BZA  
13 order.

14 The second condition would be the  
15 max number of teachers and support shall not  
16 exceed 44. Office of Planning has also  
17 referenced Attachment 3, which is important  
18 for their analysis and was important for their  
19 report. I would include the hours of days of  
20 operation, 8:00 to 5:00, Monday through  
21 Friday.

22 I, frankly, don't feel strongly

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1 either way on that. However, as it is an  
2 agreed upon condition and is a standing  
3 operational procedure, I don't see any  
4 conflict arising by having it or not having  
5 it.

6 And then the -- where did they go?  
7 One, two, three, so the fourth would be the  
8 Transportation Management Plan. And that  
9 would be the conditions. I'll open it up to  
10 others for conversation.

11 VICE CHAIR MILLER: First of all,  
12 with respect to our approval, would we be  
13 saying that this would be for the continued  
14 use as a child development center as opposed  
15 to the language that was in the application,  
16 which was for an addition to? Just to clarify  
17 that point?

18 CHAIRPERSON GRIFFIS: Oh, yes.

19 VICE CHAIR MILLER: That we  
20 started out with.

21 CHAIRPERSON GRIFFIS: Exactly.

22 VICE CHAIR MILLER: Okay. I agree

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1 with your conditions. I don't think we need  
2 to say it shall be phased in, because that is  
3 required by the settlement agreement. And  
4 depending on what we do with the term, even if  
5 we had no term, if we go beyond 20 years, it  
6 will have already been phased in, so we need  
7 a number that gives predictability and  
8 stability to this.

9 It is not needed, right, because  
10 the settlement agreement requires it. The  
11 TMP, I think, was a key part of the evidence  
12 in this case. We didn't have a lot of  
13 evidence in this case, but that was the  
14 concern about the traffic on the street and  
15 the congestion or the possibility and the  
16 mitigation against that.

17 And we heard that this is a very  
18 effective TMP that they have in place, so I  
19 think that we do need to put in our  
20 conditions, which may go beyond the 20 year  
21 term of the settlement agreement, assurance  
22 that there is a good TMP procedure.

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1           The parties have done a lot of  
2       work on language already, both in their  
3       proposed conditions and in the settlement  
4       agreement, so I think that we can look to that  
5       for the language. I think, in particular, the  
6       applicant's No. 3 of their proposed conditions  
7       sets forth three key elements, which they  
8       think should be in a BZA order and I think  
9       that those three, A, B, C, are good elements  
10      that we should include.

11           I think what we want to do is  
12      ensure that there is a good TMP in place, but  
13      also ensure that there is flexibility for the  
14      community and the school to make changes  
15      depending on how it works out and changed  
16      circumstances.

17           CHAIRPERSON    GRIFFIS:        Good.  
18      Anything else?   Anything else?

19           VICE CHAIR MILLER:   I guess it  
20      doesn't seem like a lot here, but I think that  
21      that is because there don't seem to be adverse  
22      conditions to mitigate, because the parties

1 have done such an excellent job in formulating  
2 their own agreement to work under and in  
3 addressing any adverse conditions that may  
4 have existed before that they might  
5 anticipate.

6 CHAIRPERSON GRIFFIS: Okay. Good  
7 enough. Any other comments? Any other  
8 questions, deliberations? Let me address the  
9 ANC's report, or course, that was provided to  
10 us. It's Exhibit 27, if I recall correctly,  
11 and they are in support of the application and  
12 they have a lot of whereases in their  
13 resolution, which we have all reviewed.

14 In the one instance, Ms. Miller,  
15 you actually brought it up, they now therefore  
16 resolved four things and I just want to  
17 address number three, which says that the ANC-  
18 3C supports the zoning order condition that  
19 requires the applicant to enter into a  
20 negotiated contract management agreement or,  
21 rather, a construction management agreement  
22 that minimizes the adverse impact of

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1 construction on neighbors and provides for  
2 specific and rapid enforcement mechanisms to  
3 protect the neighbors in the event of a  
4 breach.

5 Unless I missed some huge part of  
6 today, I don't believe the Board has started  
7 to even begin to craft something of that  
8 nature. However, in looking at the settlement  
9 agreement, which is the test of the applicant,  
10 I tend to agree that there is a substantial  
11 amount of work that has gone on to get to that  
12 level and I think it is productive in some  
13 respects.

14 But to illustrate the settlement  
15 agreement, as I looked at it, it's fairly  
16 comprehensive in looking at a construction  
17 management agreement as one of its elements,  
18 but it also looks at the number of students  
19 and the faculty. It talks about the events,  
20 the type of events, the number of events and  
21 when they happen and how they happen, the  
22 traffic safety and traffic management

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1 procedures.

2 It talks about how those can  
3 change and adapt also. It talks about  
4 creating and operations of a Standing  
5 Committee. That Standing Committee is  
6 obviously reviewing all of these elements over  
7 the time period of which it has established or  
8 which it does establish the duration in the  
9 settlement agreement.

10 It also addresses the proceedings  
11 before this Board and other Government  
12 agencies and the positions that each  
13 participant stakeholder would hold in that.  
14 It talks about enforcement mechanisms. It  
15 talks about other proceedings and other legal  
16 entities, meaning the Court of Appeals and the  
17 appeal process and the disposition of that  
18 depending on an outcome of this Board, very  
19 comprehensive.

20 And I think it's appropriate to  
21 fully understand that and I think we do in  
22 moving forward on our own order and focusing

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1       only and directly and specifically on the  
2       Zoning Regulations of which we have  
3       jurisdiction. It's appropriate to move ahead  
4       as we have and look at this as a special  
5       exception under 205. We now have four  
6       conditions. I would like to have other  
7       conversations, deliberation on that or  
8       additional conditions.

9               VICE CHAIR MILLER: I just want to  
10       say with respect to the traffic management  
11       procedures condition that adopts A, B and C of  
12       the applicant's proposed condition, I think I  
13       would like to add a preparatory just sentence  
14       similar to theirs, but just saying that NCRC  
15       shall maintain a Traffic Management Plan and  
16       then have the others follow, if that's okay  
17       with my Board Members.

18               And the other thing I wanted to  
19       address, I don't know if we did adequately  
20       enough, but the question about a term. I  
21       think that there wasn't evidence enough that  
22       a 20 year term would actually serve a purpose

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1 in vindicating any adverse impacts, and that  
2 actually the neighbors were looking for  
3 stability and predictability and that actually  
4 not having a term gives that more than having  
5 a term, that these are permanent enrollment  
6 figures and permanent faculty figures.

7 CHAIRPERSON GRIFFIS: Right, two  
8 things on that I absolutely support. First of  
9 all, as is evident in this proceeding and this  
10 hearing, the current condition is not created  
11 in the adverse impact based on traffic drop-  
12 offs and pick-ups with the implementation of  
13 procedures that the NCRC has implemented. So  
14 we have no evidence in the record that is --  
15 has created.

16 We obviously have presented to us,  
17 and I am relying on it, that the flexibility  
18 of the Traffic Management Plan over the long  
19 haul will continue to not have as the  
20 enrollment actually increases slightly to 185  
21 from its present condition.

22 And to address your point of the

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1 language involved, well, actually going to the  
2 address of the term, there is absolutely  
3 nothing that is persuading me to put a term  
4 limit on this, because if any of those  
5 existing conditions or proposed conditions,  
6 which have had no evidence of having adverse  
7 impact, were to change, then they would have  
8 to come back to revise the special exception  
9 of which they are operating under. So it  
10 wouldn't matter if it's a year, if it's five  
11 years, if it's 50.

12 VICE CHAIR MILLER: Also, you  
13 know, we were saying that we often put on a  
14 term when something is new and experimental  
15 and see if it's really going to work or not  
16 work. And we heard testimony that there has  
17 been a TMP in place for three years or so and  
18 that it has been working well. We didn't have  
19 any evidence of adverse impacts at all during  
20 that period.

21 CHAIRPERSON GRIFFIS: Right.  
22 Good. Now, in terms of -- I'm going to the

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1 terminology of the condition that we have had  
2 in terms of the Traffic Management Plan.

3 Actually, we have utilized I think  
4 successfully the exact words of that that we  
5 can input into it and I understand your  
6 intent, and that intent is to say there is a  
7 Traffic Management Plan in place and it will  
8 be of the three conditions below, distributed,  
9 enforced and monitored.

10 VICE CHAIR MILLER: Right.

11 CHAIRPERSON GRIFFIS: So I don't  
12 think we'll have any difficulty in doing that.  
13 Okay. So it may even just say that NCRC will  
14 maintain a Traffic Management Plan and NCRC  
15 will distribute traffic management procedures,  
16 etcetera.

17 Okay. Anything else? Any other  
18 elements, comments, questions? Okay. If  
19 there is nothing further then, we do have a  
20 motion before us. It has been conditioned,  
21 seconded and conditioned. I would ask for all  
22 those in favor to signify by saying aye.

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1 ALL: Aye.

2 CHAIRPERSON GRIFFIS: And opposed?  
3 And abstaining? Very well. Mr. Moy, if you  
4 would have the pleasure of recording that  
5 vote.

6 MS. BAILEY: Mr. Chairman, the  
7 vote is recorded as 5-0-0 to grant the special  
8 exception with conditions with the four  
9 conditions identified, and noting that the  
10 Board found that it was not necessary for the  
11 parking relief and, therefore, that was not  
12 considered or granted.

13 Mr. Griffis made the motion, Mrs.  
14 Miller second. Mr. Mann, Mr. Etherly and Mr.  
15 Hood agree, are in agreement. And are we  
16 doing a summary order, Mr. Chairman?

17 CHAIRPERSON GRIFFIS: Yes, unless  
18 there is any Board opposition to waiving our  
19 rules and regulations, we would issue a  
20 summary order on this, unless the applicant  
21 had any objections to that. Not noting any  
22 objection from the applicant, we would issue

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1 a summary order.

2 MS. BAILEY: Thank you, sir.

3 CHAIRPERSON GRIFFIS: Thank you  
4 very much. Very well. Thank you all very  
5 much. Have a great afternoon. Is there any  
6 other business for the Board?

7 MS. BAILEY: Not today, sir.

8 CHAIRPERSON GRIFFIS: Ah, but  
9 there is. Very well. We'll wish you all a  
10 very good afternoon, but the Board does have  
11 some executive business to do, so we can  
12 dispense with our hearing and close the  
13 afternoon hearing of the 9<sup>th</sup> of January 2007.

14 (Whereupon, the Public Hearing was  
15 concluded at 3:28 p.m.)

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